REPORT

OF THE

ATTORNEY GENERAL

OF THE

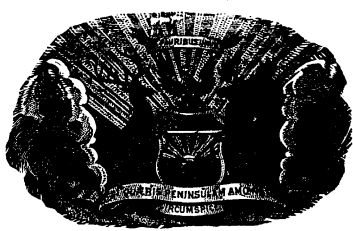
STATE OF MICHIGAN

FOR THE

YEAR ENDING JUNE 30, A. D. 1891

ADOLPHUS A. ELLIS

ATTORNEY GENERAL



BY AUTHORITY

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REPORT.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 1, 1891.

To the Governor and Legislature of the State of Michigan:

I have the honor herewith to submit, in compliance with law, the annual report of the Attorney General of all business transacted by this department from July 1, 1890, to July 1, 1891, including an abstract of the reports of the Prosecuting Attorneys of the State, showing the criminal prosecutions, penalties inflicted, and other items pertaining to the administration of justice.

The various matters embraced in said report are covered by schedules hereto attached from "A" to "J" inclusive.

In making this report I deem it advisable to call attention to several material changes in the manner of its compilation, which, in my judgment, are more fully in accord with the intent and spirit of the law relative thereto.

1. Schedule "A" contains a full statement of all criminal cases brought to the Supreme Court on exceptions, writ of error, or *certiorari*, which are disposed of or pending, in which the Attorney General has appeared.

In this schedule I have endeavored, under the title of each cause, to give a short statement of the facts, the points in dispute, and the rulings of the court thereon.

These cases involve questions of criminal law, and as the report is forwarded to the various Prosecuting Attorneys of this State, I believe this arrangement will make the volume of practical value to the Prosecuting Attorneys and others who are interested in the enforcement and practice of criminal law.

2. Schedule "B" contains a list of *mandamus*, *quo warranto*, and other proceedings commenced by the Attorney General in behalf of the State, or commenced by other parties, in which the State is directly interested.

The decision of the Supreme Court in a great many of these cases is announced orally, no written opinion being filed, and unless a person is in court at the time of the announcement of the decision, he has no way, in the records of the court, to ascertain the reasons announced by the court for its decision.

These decisions embrace questions of criminal practice, the constitution-

ality of laws, rights of various State and county officers, rights to public office, and various other questions that are of great interest to the people and the legal profession generally.

In order that the reasons of these decisions might be known to those interested therein, in the annexed schedule I have given a short statement of the facts presented to the court, the points in dispute, and the reasons assigned by the court for their ruling thereon.

3. Schedule "C" contains a list of chancery cases commenced or completed between July 1, 1890, and July 1, 1891, and cases now pending, in which the State is directly interested.

4. Schedule "D" contains a list of *quo warranto* and other special proceedings authorized by the Attorney General in the name of the State, but directed by and at the expense of the parties interested.

In the last two schedules named I have given briefly a statement of the facts of the case, and the rulings of the court, if decision has been rendered, so that persons interested in such proceedings may understand the nature and disposition of the case.

5. Schedule "E" contains a list of chancery cases commenced in the various circuit courts in chancery, in which the State is somewhat interested and to which some State officer was made a party.

These cases, in accordance with the usual practice, have been referred to the Prosecuting Attorneys of the various counties, in which they are pending and left in their charge. No report relative to those cases is made to the Attorney General's office, and I am unable to make, from any record in this office, any definite statement as to results.

6. Schedule "F" contains a statement of money received by the Attorney General and turned over to the State Treasurer. The money was received in June, 1891, in settlement of a case growing out of the detention of an indigent soldier at the Kalamazoo Asylum.

7. Schedule "G" contains a list of insurance companies where articles of association of such companies, or amendments to such articles, have been examined and approved by the Attorney General in pursuance of law.

8. Schedule "H" contains an abstract of the reports of the Prosecuting Attorneys for the year ending June 30, 1891.

In previous reports made by this department the reports of the various Prosecuting Attorneys have been printed separately *verbatim* in the report of the Attorney General.

The law provides that "the Attorney General shall include in his annual report an *abstract* of the annual reports of the *several* Prosecuting Attorneys." Howell's Statutes, Sec. 289.

It seems clear to me that the Legislature intended that a summary or synopsis of the records of the several Prosecuting Attorneys of the State should be included in the report of the Attorney General, and not that the complete report of each Prosecuting Attorney of every county in this State should be included. I realize that the change is quite an important one and breaks in upon a long established construction of this statute, and therefore give my reasons for making the change:

First, The law requires an "abstract of the annual reports." An abstract of a report is not the report itself but an abridgment, compendium or synopsis of it;

Second, Under the past manner of publishing these reports they were of little or no value in the way of furnishing statistics or other information concerning the number and nature of the crimes and their punishment in the State at large. If a person desired to know how many persons were prosecuted during the year for any offense, or the result in any class of cases, it would be necessary to examine each of the reports of the prosecuting attorneys of the eighty-four counties, and then make his own computation of the result reached by such examination.

I believe it was the intention of the Legislature to require the Attorney General, by this statute, to furnish an abstract of the criminal business of the State at large so that under each particular head, when a person desired to obtain information concerning any particular crime, he could do so by examining the one report, the same as a person can obtain the result from any county by examining the report of the Prosecuting Attorney of the business of his county.

By this method I can lay before the Governor and Legislature the aggregate of prosecutions had within the State, the disposition of each case, and thus by comparison of this report with subsequent reports, if the same interpretation of the statute shall prevail, suggest to the minds of the Legislature some of the imperfections in our criminal laws.

I am pleased to say in this report that every Prosecuting Attorney of the State of Michigan has filed in this office the report required by law, and hence the abstract given of the prosecutions in the State of Michigan during the past year in schedule "H" must be substantially correct.

9. In order that the public, and the several officers who have an interest in the enforcement of criminal law, may know the relative number of persons prosecuted in the several counties, and also have the address of the present Prosecuting Attorney, should they desire to communicate relative to any matter pertaining to the criminal law of the county, in schedule "I" I give the name and address of the officer, and the number of persons prosecuted in each county during the current year. The punishments for the offenses and the results will be found in the aggregate of all the counties in schedule "H."

10. Schedule "J" contains the opinions written by the Attorney General during the fiscal year, there being fifty-nine in all.

The Legislature of 1891 made some important changes relative to the management of criminal cases.

By act No. 75, section 1 of act No. 72, of the session laws of 1887, was amended so that under the present law all criminal business brought to the Supreme Court is under the control of the Attorney General.

The several Prosecuting Attorneys are required to furnish briefs to the Attorney General, the expense of printing and making the brief to be a charge against the several counties; and, when requested, the Prosecuting Attorney is to assist the Attorney General in the Supreme Court at the expense of the State.

Under the law before this amendment, the Prosecuting Attorneys in all cases, without request from the Attorney General, were required to follow their cases to the Supreme Court, at the expense of the State.

Under the law before it was amended a large sum of money was paid out annually by the State for traveling fees and time spent traveling, for which the State received little or no consideration. It is expected that, while this change increases somewhat the labors in the Attorney General's office, it will save to the State in the neighborhood of $2,500 to $3,000 per year.

In the last report of Attorney General Taggart, page 7, he recommended to the Legislature the appointment of a deputy in addition to the clerical help allowed the Attorney General's office, the same as in the several other branches of the State government.

He said: "The duties of the Attorney General are varied, responsible and numerous, and it is impossible for him at all times to examine with sufficient care the questions asked by officials and departments entitled to call upon the office for legal advice.

"If an assistant were at hand to aid in such examination, and in the preparation of briefs and arguments for the courts, it would enable the office to do better and more satisfactory work, and by reducing the necessary amount of special legal assistance employed in important cases, would not be an added expense to the State."

The Legislature of 1891, in view of the fact that a great amount of clerical help had been employed, and owing to the small compensation paid the Attorney General, and the lack of proper appropriation to secure sufficient help in that department, amended the law relative to the amount of the appropriation given this department by increasing the same $1,000, and submitted to the people an amendment to the constitution relative to the salary of the Attorney General, increasing the compensation from $800 to $2,500 per annum, which amendment was ratified by the people.

The increase in the appropriation in this department enables the Attorney General to have additional help, and enables the office to do better and more satisfactory work; and I believe that the result of this change will, by reducing the amount of special legal assistance, reduce the expense of this department and secure to the people far better results.

My acknowledgments are due to the several departments of State and to the present and past State officials for kind and courteous assistance in investigating matters connected with such departments.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

SCHEDULE A.

This schedule contains a full statement of all criminal cases brought to the Supreme Court on exceptions, writ of error, *certiorari* or *habeas corpus*, whether disposed of or pending, in which the Attorney General has appeared.

The People vs. Patrick J. Sullivan. Exceptions before sentence. Chippewa county. Violating liquor law. Affirmed.

This was a complaint for keeping saloon open after hours. By permission of the court, the prosecuting attorney amended his information so as to allege that defendant was not a druggist, and that the place kept open was not a drug store.

The court held that no error was committed, as the first information was not defective in not negativing the facts above referred to. The complaint on which the respondent waived examination contained the negative clauses, and an amendment to an information to cover this complaint was held properly allowed.

Reported in 47 N. W. Rep., 220.

The People vs. James Harper. Error to Charlevoix. Murder in the first degree. Sentenced to State Prison for life. Affirmed.

Respondent in this case sought a reversal on several grounds. Objections were made to the remarks of the Prosecuting Attorney to the jury that the People would not be bound by the statements of one of their witnesses, which he was obliged to call, only so far as they were believed to be true.

There were also numerous objections to the charge of the court as to the intent with which the crime was committed, his abstract definition of the crime of manslaughter, and the charge as to presumption of innocence.

They were overruled by the court, and judgment affirmed.

Reported in 47 N. W. Rep., 221.

The People vs. Andrew J. Kreidler. Exceptions from Superior Court of Grand Rapids. Selling liquor on Sunday. Affirmed.

This case seems to have been included in the annual report for 1890, and was stated in that report as having been reversed and a new trial granted.

This was an error, as no record being filed, the case was struck off, and on December 2, 1890, was affirmed on default.

The People vs. Schultz. Error to Recorder's Court of Detroit. Fraud-

ulently concealing mortgaged property. Sentenced to Detroit House of Correction for one year. Affirmed.

The respondent in this case was convicted in the Recorder's court of the city of Detroit of fraudulently removing and concealing chattel mortgaged property contrary to act No. 18, public acts 1889.

Two points were raised:

First, To the jurisdiction of the lower court.

It was insisted by counsel for respondent that the Recorder's Court had no jurisdiction because the information did not allege that the offense was committed in the city of Detroit. The court held that as the information was entitled, not only within the county but also within the city, it conferred jurisdiction.

It was also claimed by counsel for respondent that it was not the value of the property, but the interest of the mortgagee, which determined the jurisdiction. The court held otherwise.

Second, To the sufficiency of the information.

The information was rather loosely drawn, and might have properly been objected to on the trial, but as the objection was not made, it was too late on appeal for the first time to raise the question.

Reported in 48 N. W. Rep., 293.

The People vs. John W. Brown. Exceptions before judgment. Kalamazoo county. Violation of the liquor law. Affirmed.

The information in this case was filed under act 313 of the public acts of 1887 for violation of section 8 of said act. This section provides that the principal in the bond shall not sell intoxicating liquors in any other place than that specified in the bond. Respondent's counsel insisted that by reason of such provision the section was unconstitutional. The court overruled this objection.

Counsel for respondent also insisted that the statute provided no punishment for the violation of the section under which the respondent was prosecuted. The section referred to provided that "Any sale made in violation of this section * * * * shall be punished as provided in section 6." Section 6 does not provide any penalty, but the court held that respondent would be liable under section 7, which provides that persons shall be punished who in any manner violate any of the provisions of the act.

Reported in 48 N. W., Rep., 158.

The People vs. James Collison. Exceptions from Barry. Violation of fish law. Reversed and a new trial ordered.

This was a prosecution for violating act No. 329 of the local acts of 1885.

The defendant admitted the taking of the fish from Gunn lake, but insisted that it was "upon his own land, over his own soil, and in his own water;" that he had exercised such right from time immemorial, and had by long custom acquired the right to take the fish by any means; and that the statute, in so far as it interfered with such right, was invalid and repugnant to the constitution, by depriving the defendant of property without compensation.

The court held the act to be constitutional; that the defendant did not

have an exclusive right to fish in the waters of Gunn Lake, and that the control of fishing in such waters was properly exercised by the State.

Defendant requested the court to instruct the jury to acquit. This the court refused to do, discharging the jury and directing a verdict of guilty to be entered by the clerk.

The court decided there was error in discharging the jury and directing a verdict of guilty, citing the People vs. Neumann, 48 N. W. Rep., 290, where the jury acquiesced in the direction of the court, as being clearly distinguishable from this case. Here the court gave the jury no opportunity to follow or refuse to follow the court's direction, there being in fact no direction to the jury, but one to the clerk to enter the verdict.

Reported in 48 N. W. Rep., 292.

The People vs. James H. Moore. Error to Kent. Rape. Sentenced to State Prison for one year. Affirmed.

Several objections were made to the admission of testimony in this case, but counsel for the respondent simply said, "Objected to," without giving any reason whatever for his objection.

The court held that errors based on such objections could not be entertained.

Reported in 48 N. W. Rep., 693.

The People vs. Lewis J. Partridge. Error to Alpena. Rape. Sentenced to State Prison for six years. Reversed and prisoner discharged.

In this case the respondent was tried under an information containing two counts.

The first count charged him with unlawfully and carnally knowing a female child under the age of fourteen years; the second count, added by virtue of act 153 of the public acts of 1887, charged him with feloniously assaulting said child, taking improper liberties with her person, without then and there committing, or intending to commit, the crime of rape. He was convicted upon the second count.

There was no evidence to sustain the conviction under the second count, as all the evidence of the prosecution, if true, showed the commission of the first offense, viz.: rape; and there was nothing tending to show that any indecent liberties were taken with the girl, without the intent of committing rape.

The court held that under the testimony respondent was either guilty of rape or not guilty of any offense; and as he was acquitted upon the first count, and there was no evidence to support the conviction upon the second count, it was their duty, no matter how deplored the result, to discharge the prisoner.

Reported in 49 N. W. Rep., 149.

The People vs. Alfred Furman. Exceptions before judgment from Lenawee county. Violating liquor law. Affirmed.

The respondent in this case was prosecuted for keeping his saloon open on Sunday. He pleaded a former conviction in bar, to which plea the prosecution demurred, and the demurrer was sustained. On trial he

was convicted, and came to the Supreme Court on exceptions before judgment.

The former conviction relied upon was that of keeping his saloon open on said Sunday, contrary to an ordinance of the city of Adrian, entitled "An ordinance relative to maintaining quiet and good order."

The act under which respondent was convicted the second time was passed subsequently to the act incorporating the city of Adrian. The court held that the Legislature intended by the passage of the general liquor law to provide regulations for the sale of intoxicating liquors to the exclusion of regulations by municipal authorities.

Under the act of 1887 it is expressly provided that, "In all cities and incorporated villages, the common council or board of trustees may, by ordinance, allow the saloons * * to open at six o'clock in the forenoon, and to remain open not later than eleven o'clock in the afternoon, and no longer of any week day night, except on election days and holidays."

This provision, the court held, limits the power of municipalities in legislating as to the time within which saloons may be kept open; and that the ordinance in question which attempted to regulate the sale of liquor in the city of Adrian was inconsistent with the provisions of the general law, and therefore a conviction had under said ordinance would not operate as a bar to the subsequent trial and conviction under the general law.

Reported in 48 N. W. Rep., 169.

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The People vs. James McQuaid. Exceptions before sentence. Livingston County. Bigamy. Reversed and new trial ordered.

Defendant was convicted of bigamy in marrying one Emma Dodge, while having another wife living.

The information charged the first marriage to have been had with one Jennie Gartley in December, 1880, at Alleghany City, Pa.

The second marriage was clearly proven, and the only question raised related to the proofs of the first marriage.

The Court held that a resident minister of Pennsylvania, who testified to the frequent consultation of the statutes of that State, and had observed the introduction of books containing these statutes in the courts for the last twenty years, was competent to prove the form in which the statutes of his native State were published, and whether such books were received and recognized as authority; and that when called upon simply to identify the book in which the law was published, it was competent for him to testify as to the common acceptance of the publication as authority.

The Court also held that where it appeared that the first marriage was not performed according to statutory requirements, and there was no evidence of subsequent cohabitation of the parties, a conviction for bigamy could not be sustained.

Reported in 48 N. W. Rep., 161.

The People vs. John Neuman. Error to Mason. Violating liquor law. Fined thirty-five dollars. Affirmed.

This was a prosecution for violation of Act No. 313 of the laws of 1887 for selling liquor to a minor.

The defendant was a saloon keeper in the City of Ludington. Fred

Brown, of the age of seventeen years and upwards, visited defendant's saloon in company with two adults.

The testimony showed that the three were sitting around a table and Fred Brown paid for the beer, but that it was not given directly to him. The defendant testified on his own behalf that one of the adults ordered the beer, and that Fred Brown simply handed him the money.

The Court held that under our statute "it is not necessary that a person should hand the liquor to a minor in order to furnish it; if the liquor belonging to a person and under his control, is by his consent or connivance permitted to be taken and drank by the minor, whether it is passed to him direct or through the hands of another, it is immaterial, the liquor in either case is furnished to such minor."

The Circuit Court directed a verdict of guilty; upon this, error was assigned, and the Court held that, "whenever there is no question of intent in a criminal case * * * * and where upon the admitted facts, the only question to be determined is whether, under the law, the statute has been violated, the trial judge may with perfect propriety state to the jury that the law applied to the facts, which are undisputed, shows the defendant to be guilty of the offense charged and that it is their duty to so find under the facts and the law."

Reported in 48 N. W. Rep., 290.

People vs. William Deitz. Exceptions before sentence. Ingham County. Assault with intent to do great bodily harm less than the crime of murder. Reversed and new trial granted.

Objection was made to the prosecution showing the unfriendly relations of the parties some three years previous to the difficulty.

The Court held this competent, but that unconditional threats of which nothing came, were incompetent, and the Court erred in admitting it.

Defendant in his testimony denied an immaterial matter. The Circuit Judge allowed the Prosecuting Attorney to indorse the names of three witnesses upon the information for the purpose of rebutting this testimony. *Held*, by the Court, to be error.

Objection was also made to the failure of the prosecution to call certain eye witnesses to the affray. The Court held that eye witnesses to an affray must not only be present in Court, but the prosecution must examine them, so the defense may have an opportunity to cross-examine.

Observations taken some two months subsequent to the affray was held by the Court not admissable as impeaching evidence, unless shown that the location and all the surroundings were in the same identical condition as at the time when the occurrence testified to happened.

Reported in 49 N. W. Rep.. 296.

The People vs. Hall. Error to Tuscola. Larceny. Sentenced to State Prison for five years. Reversed and new trial granted.

The defendant in this case was tried and convicted of stealing sheep. His plea was not guilty. There were admissions by defendant's counsel of his taking the sheep.

The court reversed the judgment on the ground that the charge of the circuit judge, in so far as it stated that respondent took the sheep "with felonious and larcenous intent" was erroneous, as a conviction in a crimi-

nal case, involving the question of intent, cannot be predicated upon the admissions of counsel.

Reported in 48 N. W. Rep., 869.

The People vs. John P. Hughes et al. Error to Genesee county. Violating liquor law. Recognizance for appearance furnished. Reversed and prisoners discharged.

The respondents in this case were the proprietors of a saloon, and were convicted in the circuit court for violating section 15 of act 313 of the public acts of 1887, which provides that, "It shall be unlawful for any person to allow a minor to visit or remain in any room where liquors are sold, etc."

Defendants were absent at the time of the alleged offense, and they had no knowledge that these minors were about to visit their saloon. The people sought to render them liable criminally for the acts of their clerk, under the above section. The information charged explicitly a violation of section 15 above quoted.

There was no dispute in the testimony concerning the respondents not being present. *Held*, by the court, that under this section proprietors of saloons could not be held criminally liable for the acts of their clerks, done without their knowledge or consent, and in their absence.

The court held further that the provision in section 14 of said act, making a saloon keeper liable when his clerk or servant permits minors to play cards in the saloon, does not extend the liability of the saloon keeper, under section 15, to acts of his clerk.

Reported in 48 N. W. Rep., 945.

The People vs. John Johnson. Exceptions from Mackinac. Resisting an officer. Reversed and prisoner discharged.

The respondent was arrested in the first instance for breach of the peace. The officer, who was 150 feet away, on another street, and did not see the offender, and had no direct knowledge that it was he who committed the offense, arrested him without a warrant.

The court held that shouting upon the streets of a village between nine and ten o'clock at night, so loudly as to be heard 150 feet distant, was a breach of the peace, but that the offense was not committed in the "presence" of the officer, he being distant 150 feet on another street, and unable to see the respondent.

When the arrest was attempted, the respondent resisted, and it was for this that he was prosecuted and convicted in the circuit court.

There was some evidence to the effect that respondent was intoxicated when arrested, and the people sought to claim, on appeal, that he was arrested for this.

It was held by the court that on appeal from a conviction for resisting an officer arresting a person for breach of the peace, the State cannot claim for the first time that he was arrested for being intoxicated, although there was evidence to that effect.

As the arrest was not in the "presence" of the officer, it was not justified, and the prisoner was discharged.

Reported in 48 N. W. Rep., 870.

The People vs. Joseph Hubbard. Error to Genesee county. Concealing stolen property. Sentenced to Jackson for two years. Affirmed.

The respondent in this case was convicted of the offense of having received stolen goods, knowing them to have been stolen.

The counsel for defendant claimed that under the statute the prisoner should be discharged for the reason that it was his first offense, and that restitution of the property had been made. The return shows that upon the trial neither of these facts were brought to the attention of the Circuit Judge.

It appeared that respondent loaned the money to one of the thieves to settle the matter up, and took security on a yoke of steers. This, the Court held, was not such a restitution by the respondent as would fall within either the letter or the spirit of the statute; and that if it was the first offense, and restitution had been made, these facts should be made to appear to the Circuit Judge before sentence, and not having been done, defendant cannot avail himself of it on appeal to the Supreme Court.

The evidence also showed that defendant lived within one hundred rods of the county line. The larceny was committed in Allegan county, but the respondent resided in Van Buren county. It was decided that the Allegan County Court had jurisdiction under the statute to try the respondent.

Reported in 49 N. W. Rep., 265.

The People vs. Aplin. Error to Genesee. Burglary. Sentenced to five years in the State House of Correction at Ionia. Affirmed.

Conviction in this case was asked to be set aside for two reasons:

1. That a disqualified juror sat upon the panel.

Defendant had not exhausted his peremptory challenges; the court held, therefore, that he could not be heard to complain of the retention of the juror.

2. The building into which respondent broke and entered was not within the curtilage.

The building was a barn situated a short distance from the house, separated by one fence with a small gate. This barn was used jointly for storing the grain and farm property of John and James Donnelly. The dwelling house was alleged in the information to be that of one John Donelly.

The Court held that a charge that if the barn was an outhouse adjacent to and used as a part of the homestead of John Donnelly, and there was access between them by a gate, then the barn would be within the curtilage, was correct.

The People vs. Bert Robinson et al. Error to Kalamazoo county. Burglary. Robinson sentenced to State prison for two years and nine months, Smith to the State House of Correction for two years and six months. Affirmed.

Respondents were convicted in the Kalamazoo Circuit Court, before a jury, of the statutory offense of breaking into and entering a flour mill in the night time, with intent to commit the crime of larceny.

Defendants claimed that certain admissions were procured from them by an officer after their arrest, under a promise that it would be better for them to tell how the matter occurred. The officer denied this. *Held*, by the Court, that the question whether such promises were in fact made is for the jury, and the admissions may be proved.

Respondent testified in his own behalf, and objection was made to the prosecution cross-examining him. The Court held that act 125 of the laws of 1861, permitting accused persons to testify, not under oath, in their own behalf, was repealed by act 245 of the laws of 1881, permitting them to testify under oath, and the State may cross-examine a defendant, offering himself as a witness, although unsworn, to the same extent as any other witness.

Further objection was made to the fact that the court recalled the jury and gave additional instructions in the absence of defendant's counsel. *Held*, that this was not reversible error, where it appears that the additional charge was unobjectionable, and was taken down by the reporter, and appears of record.

Reported in 49 N. W. Rep., 260.

The People vs. Edwin R. Moorman. Exceptions before sentence. Ionia county. Violation of the pharmacy law. Affirmed.

In this case respondent was convicted of a violation of the pharmacy law of this State. The act under which conviction was had was claimed to be unconstitutional on three grounds:

1. The law provides that no person shall vend patent or proprietary medicines by retail, unless he has been in the business of vending and retailing such medicines three years or more. This was an amendment added in 1887.

It was claimed that this provision grants a monopoly to a favored few, and for no adequate reason.

The Court held that, though the amendment should be declared unconstitutional as tending to create a monopoly, that would not affect the validity of the rest of the law; and as the defendant was not arrested for vending patent medicines, that section did not affect this case.

2. It was also claimed that the law authorizes the pharmacy board to fix the license fees arbitrarily, and to make a distinction in their discretion between different individuals. *Held*, by the Court, that the fact that the act allows the board discretion to fix a fee for the required certificate, not to exceed a named sum, does not give the power to fix fees arbitrarily and to discriminate between individuals.

3. The main objection taken to the act, and the only one which concerned the respondent, was that the law deprives a registered physician of the right to compound, put up and sell drugs and medicines, which it must be considered from the nature of his profession he is thoroughly competent to do, it being claimed that he had a vested right to do this which the Legislature could not destroy. The law was held by the court to be no infringement of the vested rights of physicians, and that without compliance with its requirements, they had no right to keep open shop for the retailing, disbursing, or compounding of medicines and poisons.

Reported in 49 N. W. Rep., 263.

The People vs. Drennan. Error to Wayne. Fined $200. Reversed and new trial granted.

This was a case of violating the liquor law by not having paid the tax required by law. The complaint and warrant upon which the respondent was arrested was defective, in that it did not negative the fact that respondent was not a druggist. This defect was raised on the trial in the Circuit Court for the first time as a reason why evidence should not be

admitted. The court held this objection came too late, that it should have been raised by a motion to quash the information, and the question could not be raised on the introduction of testimony.

There was some question as to who was the owner of the saloon during the time which it was claimed the tax was not paid. Drennan was sworn on his own behalf and testified that he was not engaged in the liquor business at that time; that his brother William, since deceased, was running the saloon. The respondent had more or less to do in the saloon, and assisted his brother at odd times.

There was no evidence showing that he had not paid the tax during the time alleged by the prosecution, and the court held that in the absence of such evidence he could not be convicted for illegal sales as his brother's clerk, but only as owner of the saloon, and hence it was error to refuse to charge on that issue that his guilt must be established beyond a reasonable doubt.

Reported in 49 N. W. Rep., 215.

The People vs. Harry Hull. Exceptions from Wayne county. Murder. Reversed and new trial ordered.

It appeared on the trial in this case that a *melee* occurred sometime before the killing, during which, as respondent claimed, the deceased intentionally knocked him over a railing, while Beatty, a witness for the State, testified that deceased tripped and fell against respondent and then caught him by the leg and let him down easily. It was held by the Court to be error to charge that, "If respondent had been knocked over the railing as claimed, and struck upon his head and face, would not the fall have injured him and left some soreness? On the other hand if, as Beatty supposed, deceased grabbed respondent by the leg, letting him down easily, the absence of soreness about the head and shoulders tends to sustain the testimony of Beatty," as it was argumentive and tended to prejudice the jury.

There were witnesses who were present and testified as to what took place during the trouble. The Circuit Judge attempted to restrict the cross-examination of these witnesses and not permit the defense to inquire as to their whereabouts, as well as other witnesses, during the time between the *melee* and the shooting. *Held*, to be error.

The Court during the trial proceeded to examine a witness and the manner of such examination was objected to by the defendant, and the Court said: "I want all the facts in the case." The defendant claimed that the Court's tone and manner was hostile to him, and the Court's remark "If it is because the facts may be prejudicial to you if they came out," was held to be error, especially where the Court afterwards examined the witness at length.

After the evidence had closed, the Court directed that the jury should view the premises where the murder was committed. During this view the respondent was confined in jail. It was urged that it was a violation of a constitutional right of respondent to take the jury to view the premises in his absence.

The Court held that no error was committed in directing a view of the premises by the jury, but it was error to permit the jury to separate while viewing the premises in the absence of the respondent.

While the view was being had one of the jurors took a drink of liquor upon the premises he was viewing, as a juryman, and at the bar of the

principal witness for the prosecution. It was held by the Court to be such misconduct as would call for a new trial.

Reported in 49 N. W. Rep., 288.

In the matter of the petition of Charles O. Smedley for and on behalf of George Ludington, for writ of *habeas corpus*. Writ granted and prisoner discharged.

The petitioner in this case represented that one George Ludington had been sentenced to the State House of Correction and Reformatory at Ionia for the term of three months, and that he was confined in the said State House of Correction and Reformatory illegally, for the reason that the Superior Court of Grand Rapids had no authority or right to sentence the prisoner to said House of Correction for the offense of which he was found guilty.

The prisoner was arrested for assault to do great bodily harm less than the crime of murder. He was examined in the Police Court of Grand Rapids and bound over to the Superior Court for trial. He was convicted in the Superior Court of simple assault and battery. The judge of the Superior Court sentenced him to the State House of Correction at Ionia for three months.

The only question to be disposed of was whether the Superior Court could inflict a greater punishment for an offense triable by the Police Court than could have been inflicted by the Police Court if conviction had been had there.

The Police Court of Grand Rapids has the same jurisdiction as the several justice courts of the State.

The Court held that the sentence pronounced by the Superior Court was illegal and without authority, as he possessed no power to inflict a greater punishment for assault and battery than could have been inflicted by the Police Court, and the Police Court did not possess the power to send a person to the State House of Correction and Reformatory at Ionia, for assault and battery.

No written opinion was filed.

In the matter of William Walsh. Application for writ of *habeas corpus*. Petitioner remanded.

Walsh was confined in the State Prison at Jackson. On June 29, 1891, he applied to the Supreme Court for writ of *habeas corpus*; hearing was had on June 30, and he was remanded to the custody of the Warden of the State Prison.

The application was filed on the ground that Walsh, by reason of the good time to which he was entitled under the statute, had served out all of his time. Had he been credited with all his good time his term would have expired March 21, 1891; but it was claimed by the Warden that by reason of infractions of the prison rules his time had been so reduced that his term would not expire for some time.

It appeared on the hearing that the board had adopted written rules concerning discipline but had not adopted any rules in the prison, stating definitely what the forfeiture should be for infractions of these rules. The rules which had been adopted being only three in number and very indefinite, and that the board had made no written, certain standard of the number of days that would be lost from the good time for any particular misconduct.

It did not appear that the prisoners were notified each month, if at all, of their standing as to lost time, unless it was asked for. The record of infractions was kept by the clerk of the prison, from reports of the keepers and other officers, in a book called the "Warden's Daily Journal," and the statement from this book was figured up by the Warden's clerk on request of prisoners, but it did not appear that that was done very accurately. The inspectors of the prison approved the reports of the keepers and officers by simply signing their names to the journal.

There was an unwritten rule that had existed in the prison for upwards of twenty years, by which any convict forfeited for each offense in each month as many days good time as he would have earned during that month, and in case there were two infractions in the same month, then he would lose the same amount of time for each infraction of the rules.

It appeared that Walsh attempted to escape in January, 1891, also that he had weapons in his hands at that time. Under the long standing rule above referred to, there was charged up to him two infractions that month and a deduction made of seven and one-half days for each offense.

There was a rule of the prison that provided that the board might, if they saw fit, deduct from a convict all of his good time for attempting to escape.

The board had not taken any action whatever concerning the attempt of Walsh to escape further than to sign the record from which was deducted the fifteen days for the two infractions in January. Subsequently in June Walsh made an application to the Circuit Court of Jackson county to be discharged, on the ground that his time had expired. The Circuit Judge remanded Walsh, and the board of control of the prison thereupon met and passed a resolution forfeiting all of Walsh's good time.

The court held that the object of the statute of this State permitting good time to be earned by convicts is to stimulate the prisoners to good behavior by the hope of reward in the shortening of their term of confinement, and that the forfeiture of such good time could not rest in the caprice or favoritism of the board in each particular case, but should depend upon fixed and regular rules applying to all alike; that the rules should be adopted and made of record by the board and be promulgated by the Warden so as to be known and understood by the prisoners.

The Court further held that the rule which had existed for twenty years by which a convict forfeited, any month, for an infraction of the rules, the amount of good time that he might have earned, must be presumed to have been adopted by authority, and to be known to the prisoners then confined in prison, and be binding both upon the board and the prisoners until other rules were adopted; that the resolution of the board in June, by which they attempted to forfeit all of Walsh's good time, was void; and that computing the actual time that Walsh had lost by reason of the above mentioned rule, his time would not expire until July 12, 1891, at noon, and he was accordingly remanded.

Reported in 49 N. W. Rep., 606.

Criminal cases pending in the Supreme Court:

The People vs. Augustus Bane, the People vs. Thomas Murray, the People vs. James N. Miller, et al., the People vs. William J. Stevens, the People vs. Chas. Fay, the People vs. Daniel Cummings, the People vs. Henry J. Scott, the People vs. Frank Umlauf, the People vs. Albert E. Mason, the People vs. John Slack, the People vs. James Bradley, in the matter of Sherwood Hall, in the matter of Hattie Lewis.

SCHEDULE B.

This schedule contains a list of *mandamus* cases, *quo warranto*, and other proceedings commenced by the Attorney General in behalf of the State, or commenced by other parties, in which the State is directly interested:

Auditor General of the State of Michigan vs. Board of Supervisors of Midland county. *Mandamus.* Writ denied.

This was a petition for *mandamus* to compel the board of supervisors of Midland county to apportion among the several townships of that county an amount of indebtedness claimed to be due the State from said county. The controversy arose over the amount found by the Auditor General to be due the State from said county.

The only question for consideration presented to the Court was the manner of keeping the books between the county and the State, and whether the county was estopped by the dealings had between it and the State from making claim for certain accounts.

The Court held that where the account of taxes between a county and a State include items against the county which the State has no right to charge against it, but which are carried in the account for years without dispute, and are included in the annual settlements between the county treasurer and the Auditor General, the county is not estopped, by reason of such settlements, from disputing the validity of these items, when it appears for the first time what those items were, and the State attempts by *mandamus* to compel it to collect taxes to pay these charges.

Reported in 47 N. W. Rep., 579.

Thomas Wellman vs. the Chicago and Grand Trunk Railway Company.

This case raises a question concerning the constitutionality of a portion of act No. 202 of the public acts of 1889, viz.: That part of the act fixing the price of passenger fare at two cents per mile in certain cases.

The railroad company refused to sell the plaintiff a ticket at that rate, and he sued the company in the Circuit Court.

When the case was brought into the Supreme Court the Attorney General interposed on behalf of the State, as it was for the interest of the people of the State to sustain this law. The Court held that the law was constitutional. The opinion is reported in the 47 N. W. Rep., 489. The case has been appealed to the Supreme Court of the United States by the railroad company, and is still pending.

Adoniram J. Smith vs. Board of State Auditors.

This was a petition for *mandamus* to compel the Board of State Auditors to audit and allow $100 State bounties under the act of Feb. 4, 1864.

The relator first applied to the Supreme Court for a *mandamus* to compel the Auditor General to issue his warrant for this claim. This writ was refused. (Smith vs. Aplin 45 N. W. Rep., 136.)

He then filed this application.

The question involved in this case was the construction of section 8 of act No. 23 of the laws of 1864. That part of the section involved is as follows: "There shall be paid from the war fund of this State a uniform State bounty of $100 to each person * * * who may hereafter enlist and be mustered into the military or naval service of the United States, and who shall be credited on the quota of this State * * * under any call or order of the president or military authorities of the United States * * * made or issued since the first day of January, 1864, * * *." The act was passed February 4, and approved February 5, 1864.

One call had been made February 1, 1864, of 200,000 men. Four other calls were made during the year 1864, dated respectively: March 14, April 23, July 18, and December 19.

Relator claims that the act included bounties to all soldiers who were enlisted and credited upon calls subsequent to its passage as well as upon those prior thereto.

The Court held that his right depended entirely upon the meaning of the word "since" used in the act; and that the word "since" as used in the act means any call or order made or issued since the first day of January and before the fourth day of February, 1864.

As the petitioner did not enlist under the call named, the writ was denied.

The case is reported in 48 N. W. Rep., 627.

The People *ex rel.* Attorney General vs. Marsden C. Burch.

This was a proceeding in the nature of a *quo warranto* to test the right of the respondent to hold the office of a Judge of the Circuit Court for the county of Kent.

First, It was urged that the law under which the respondent held his office was not legally passed.

The bill passed by the Senate, was amended and passed by the House and the Senate concurred in the amendment, and sent it to the engrossing committee; afterwards the House requested its return, and the Senate obtained it from the committee, after which the Journal recites the following proceeding: " * * * Moved to reconsider the vote by which the *Senate passed the bill*, which motion prevailed. The question being on the passage of the bill, on motion of * * * , the bill was ordered returned to the House." At the close of the Journal for the session, and before the secretary's certificate, among the list of "errata in the records of bills," was a reference to the page and lines of this entry with this correction: "The vote reconsidered was not the passage of the bill, but the vote by which the Senate concurred in the House amendments to the bill."

It was claimed that the secretary had no right to make the correction. *Held*, that it must be presumed that the vote was as stated in the secretary's correction, as that was the proper course, and that the bill was properly passed.

Second, On the original passage the Senate voted that the bill should take effect immediately and the House, after amending it, passed a like vote. The Senate concurred in the amendments, but did not again give it immediate effect. It was claimed by reason of this that the bill did not take immediate effect, and that the appointment was made before the bill took

effect. *Held*, that the bill would take effect immediately although the Senate when it concurred in the amendment did not vote again to that effect.

Third, The act under which respondent received his appointment provides, among other things: "The person so appointed shall hold his office provisionally from the time of his appointment until the general election for township officers in the spring of 1893, or until his successor shall be elected, and the term for which said judge shall be appointed shall expire December 31, 1893."

Held, that the act was valid so far as it authorized the appointment of a judge to hold until the next general election, but that the Legislature had no power to extend the term of the person appointed beyond that time.

Fourth, Held, that the person appointed was authorized to hold his office until his successor was elected. Further held that at the time the information was filed in the case, September 10, 1890, the respondent was legally holding the office of circuit judge, and, therefore, the writ should be dismissed.

Alexander P. Waite vs. the Commissioner of Land Office.

In 1883 the Legislature of the State, by act No. 130 of the laws of 1883, granted or attempted to grant "to the county of Livingston ten thousand acres of swamp lands in the lower peninsula, not otherwise appropriated, for the purpose of aiding in straightening the channel of Cedar river and its east and west branches, and opening, widening and deepening the same."

One Edward W. Sparrow became the contractor for doing the work, and upon the completion of the work certain scrip was given to him by which he claimed to be entitled to take swamp lands in the lower peninsula.

Alexander P. Waite was the assignee of Mr. Sparrow, and by virtue of certain scrip obtained as assignee aforesaid, Waite on the 18th of November, 1890, selected the south half of the northwest quarter of section twenty-four (24) in town thirty-eight (38) north, of range three (3) west, Cheboygan county.

The land selected, at the time the act in question was passed, was licensed to Alexander Gero as a homestead. Gero abandoned the land on the 24th of October, 1890, and after it was abandoned it had not again been offered for sale, as provided by sections 5249-5253 of Howell's Statutes.

The Commissioner refused to issue a patent for the land, claiming that the land could not be taken under the grant, and relator applied for *mandamus*. The case was heard before the Supreme Court in the June term, 1891, and on July 27th the writ was denied.

Allen C. Adsit vs. Gilbert R. Osmun, Secretary of State, and Allen C. Adsit vs. Board of State Canvassers.

These are two *mandamus* cases, one against the Secretary of State asking for an order compelling him to give notice of the election to fill a vacancy in the office of Circuit Judge; the other against the Board of State Canvassers, asking them to canvass the vote given for Allen C. Adsit for the general election in November, 1890, for Circuit Judge.

A request was made of the Secretary of State to give a notice of an

election of the Circuit Judge in Kent county. The Secretary refused to give the notice.

The dispute arose relative to the construction of act 97 of the public acts of 1889, providing for an additional Circuit Judge in the county of Kent. One of the political parties claimed that in so far as the act authorized the person appointed by the Governor to hold the office after the general fall election of 1890 it was in violation of article 6, section 14 of the constitution which authorizes the Governor to fill a vacancy only until the appointee's successor is elected and qualified, and which provides that "such successor shall hold his office for the residue of the unexpired term."

The relator was nominated for such unexpired term by his party, and although the Secretary of State refused to give the notice, his candidacy was notorious, and unofficial notices of election were posted in every election precinct, his name was on the official ticket printed by the State authority, and at the election he received the full party vote which carried the county by a plurality of 1,500.

Held, that his election was not invalidated by the refusal of the Secretary of State to give the usual statutory notice of election, as the want of such notice did not result in depriving sufficient electors of the opportunity to exercise their franchises to change the result of the election.

Held further, that the election was not invalidated by the fact that the statute under which the respondent was appointed was not judicially declared unconstitutional until after the election, nor by the fact that the other political party made no nominations for the office, that the maxim that all men are presumed to know the law must prevail.

The writ of *mandamus* was granted against the Board of State Canvassers as prayed.

Reported in 48 N. W. Rep., 31.

Joseph A. Neally vs. Cornelius J. Reilly, Circuit Judge.

This was an application to the Supreme Court for a peremptory *mandamus* to compel the Circuit Judge to quash the proceedings instituted for the purpose of disbarring the petitioner from practice in the Wayne county courts.

The petitioner was admitted to practice by the Supreme Court, but had never been admitted to practice, on motion or otherwise, in the Wayne county courts, nor had he signed the roll of attorneys of such county.

It was claimed that the Circuit Court had no jurisdiction to disbar respondent because he was admitted in the Supreme Court.

The Supreme Court denied the writ January 7, 1891. No opinion was filed.

John Boynton vs. Calhoun Circuit Judge.

One John Boynton was arrested in the county of Calhoun, charged with being a "drunkard and a tipler" in violation of act No. 264 of the public acts of 1889, the information charging it to be the third offense; that the previous offenses were committed, one on September 29, 1887, and the other July 30, 1889.

Act No. 264 of the public acts of 1889, under which the information was filed, gives the Circuit Court jurisdiction in cases of a third offense,

and provides the penalty of imprisonment in the Detroit House of Correction or the Reformatory at Ionia.

The respondent being arraigned in the Circuit Court made a motion to quash the information on the ground that the court did not have jurisdiction as it appeared on the face of the information that one of the offenses was committed prior to the passage of act No. 264 of the public acts of 1889. The motion was overruled and the relator made an application to the Supreme Court for *mandamus* to compel the Circuit Judge to grant the motion and quash the information. The Supreme Court held that all three offenses must have been committed since the passage of act No. 264 of the public acts of 1889, and granted the writ as prayed. No opinion was filed.

Wesley M. Featherly vs. George W. Stone, Auditor General.

This was a petition filed by Wesley M. Featherly of Au Sable in the Supreme Court, asking for an order against George W. Stone, Auditor General, commanding him to vacate an order by which the said Auditor General had canceled the designation of the "Lakeside Monitor" as the newspaper in which to publish the lists of lands to be advertised for sale for taxes in the county of Iosco at the general tax sale in May, 1891.

The facts briefly are that the Honorable H. H. Aplin, Auditor General, before the expiration of his term, sent to the relator a list of the lands which were to be advertised for sale in Iosco county in May, 1891. No bill was filed in the Circuit Court for Iosco county during the term of office of the said Aplin, relative to the lands described in the list sent the relator.

After taking possession of the office, George W. Stone, Auditor General, revoked the order made by his predecessor and designated another paper to publish the tax lists.

The court held that George W. Stone, Auditor General, had all of the rights of his predecessor, and could revoke any order that he or his predecessor had made relative to the papers in which tax land lists should be published, and that the designation of such papers was not a contract. *Mandamus* was denied. No opinion was filed in the case.

Gaffney, Prosecuting Attorney, vs. Missaukee County Circuit Judge.

Mandamus. Writ granted.

In this case a petition was filed in the Supreme Court praying for a *mandamus* to compel the Circuit Judge to set aside the order quashing an information and to direct the court to proceed to trial.

The sole question involved was whether a discharge by a justice of the peace, upon examination of a person charged with crime, constitutes a bar to his subsequent arrest, examination and trial for the same offense, when the testimony upon the second examination is substantially the same as that produced upon the first.

The court held that no proceeding can operate as a bar to further prosecution until the accused has been put in jeopardy, and this cannot occur until he has been placed upon trial.

Reported in 48 N. W. Rep., 478.

Joshua Ivison vs. Henry Hart, Circuit Judge.

The grand jury of Isabella county found an indictment against the relator for selling liquor without paying the tax provided by act No. 313 of the public acts of 1887.

Upon arraignment in the Circuit Court he made a motion to quash the information for the reason that it did not aver that he "was not a druggist who sells liquors for chemical, medicinal, mechanical and sacramental purposes only, and in strict compliance with the law," for that the information omitted the words "in strict compliance with the law." The Circuit Judge denied the motion, and on application to the Supreme Court for *mandamus* to compel the Circuit Judge to quash the information, the order was denied. No opinion was filed.

Burton F. Browne, *et al.* vs. George W. Stone, Auditor General.

The relators in this cause asked for an order of the Supreme Court to compel the Auditor General to audit and pay their account of $348.80 for publishing the delinquent tax lists in the county of Huron in the year 1891.

In 1890, during his term of office, Hon. H. H. Aplin, then Auditor General, had sent to the relators a list of lands to be sold for taxes, and requested them to publish the same. The first publication to take place in the week ending January 30, 1891. Subsequently the present Auditor General, George W. Stone, revoked the order and designated another paper to publish the list. The relators, notwithstanding the revocation, published the list.

Before the order was revoked the relators had done some work preparatory to publishing the list. The Supreme Court did not grant the prayer of the petitioners to pay for the publishing, but directed that the Auditor General should ascertain and audit the amount due the relators for the work done prior to the time that he revoked the order of publication. No opinion filed.

Attorney General vs. Frank A. Hooker, Calhoun Circuit Judge.

One George E. Wilson was arrested for violating Sec. 19 of act No. 187 of the public acts of 1887, by acting as agent for a foreign insurance company, the company not being authorized to do business in this State.

He was bound over to the Circuit Court and an information filed against him, and when the cause come on for trial a motion was made to quash the information. The Circuit Judge granted the motion and held that said act No. 187 of the session laws of 1887 was unconstitutional and void as being in conflict with section 20 of article IV of the constitution of this State, as embracing more than one object within its title.

The Attorney General made application to the Supreme Court for *mandamus* to compel the Circuit Judge to vacate and set aside said order.

The title of the act under consideration reads as follows: "An act to revise the laws providing for the incorporation of co-operative and mutual benefit associations, and to define the powers and duties and regulate the transaction of the business of all such corporations and associations doing business within this State."

The Supreme Court held that the law was constitutional and granted

the writ, directing the Circuit Judge to proceed to trial. No opinion was filed.

In the matter of Cornelius V. R. Pond. Application for requisition from the state of Kansas, and proceedings on *habeas corpus*.

The Governor of the state of Kansas made a requisition on the Governor of this State for the apprehension and delivery of Cornelius V. R. Pond on papers charging him with embezzlement.

The papers being regular upon their face, Governor Winans granted a warrant, directed to the sheriff of Washtenaw county, and Mr. Pond was arrested thereon. Subsequently, and on the same day of his arrest, he applied for a writ of *habeas corpus* to the Circuit Court for the county of Washtenaw. The Attorney General was notified of the pendency of the proceedings and attended the hearing.

It was first sought to release the respondent on the ground that the Governor's warrant in reciting the papers on which the warrant was issued described them as a "complaint" instead of describing them as an "affidavit." The sheriff amended his return and attached thereto copies of the entire papers, which showed that the "complaint" described in the Governor's warrant was an affidavit made before a magistrate of the State of Kansas, but which, under the law of that State, is described as a complaint. After the amendment the hearing of the cause was continued.

Before the matter came to hearing before the Circuit Judge of Washtenaw county, Mr. Pond filed a petition with the Governor, asking to have the warrant withdrawn on the ground that the prosecution was for private purposes and to extort money from him and not for the purpose of criminal prosecution, which petition specifically denied the commission of any offense, or that he was a fugitive from justice.

The cause was heard before Governor Winans, and after hearing the proofs in the matter, he withdrew the warrant and ordered the discharge of Mr. Pond; and thereupon the Attorney General wrote a letter to the governor of Kansas, stating the result of the application, which letter is substantially as follows:

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE.

HON. L. U. HUMPHREY, *Governor of Kansas, Topeka, Kas.:*

DEAR SIR—I desire to say in reference to your application for extradition warrant for C. V. R. Pond, that the Governor of this State issued his warrant as requested and Mr. Pond was arrested, after which proceedings were commenced by *habeas corpus* before a Circuit Judge to obtain the discharge of Mr. Pond, by reason of certain imperfections appearing in the papers.

Pending the *habeas corpus* proceedings, which were adjourned from time to time, a petition was filed with Governor Winans, asking that he withdraw the warrant, relying principally upon the alleged fact that Mr. Pond was wanted in Kansas for the purpose of serving private ends and not for the purpose of public prosecution.

The matter of this petition was heard before the Governor and it was made to appear by letters written by Mr. Springer's attorneys in Kansas, and from other sources, that the real object of the prosecution was to obtain something more from Mr. Pond on the civil liabilities existing between him and Mr. Springer.

It appears without contradiction that after Mr. Pond left Kansas that Mr. Springer sent an attorney to Michigan to make a final settlement with Mr. Pond, which settlement was made and accepted.

This attorney wrote (and his letter was placed on file with the Governor) in substance that the object of the prosecution was to get something more out of Mr. Pond; and his

Excellency, Governor Winans, being quite fully convinced that the substance of the petition asking for a withdrawal of the warrant was true, canceled the same, and directed that Pond be discharged.

I attended the hearing on the writ of *habeas corpus* to sustain the Governor's warrant, and was also present at the hearing on the application to withdraw the same; and while I am perfectly satisfied that Mr. Pond ought not to have been discharged by reason of any legal technecality in the papers, yet I believe the decision reached by Governor Winans, upon the hearing of the facts as to the object of the extradition, would have been fully sustained by your excellency, had you been present at the hearing.

Very respectfully,

A. A. ELLIS,
Attorney General.

The result appeared to be satisfactory to the governor of Kansas, as appears by his letter to the Attorney General, which was substantially in the following form:

STATE OF KANSAS,
GOVERNOR'S OFFICE.

HON. A. A. ELLIS, *Attorney General, Lansing, Mich.:*

DEAR SIR—I acknowledge receipt of your letter. The papers in the C. V. R. Pond case were examined and approved by the attorney general, and disclosed facts justifying extradition proceedings. If, however, it was established to the satisfaction of Governor Winans and yourself that the object of the prosecution was to compromise or simply get more money out of Pond, I fully acquiesce in the decision of his Excellency to withdraw the warrant. Very respectfully,

LYMAN U. HUMPHREY,
Governor of Kansas.

MANDAMUS PROCEEDINGS PENDING.

Auditor General of the State of Michigan vs. the Board of Supervisors of Allegan county.

To compel apportionment of indebtedness due the State.

Isaac F. Lamoreaux vs. the Attorney General.

Mandamus to compel the filing of an information against the sheriff of Kent county.

QUO WARRANTO PROCEEDINGS PENDING.

The People *ex rel.* Attorney General vs. the National Loan and Investment Company.

Information to test the powers of the company.

Attorney General vs. The Toledo, Ann Arbor & North Michigan R'y Co.

SCHEDULE C.

This schedule contains a list of all chancery cases commenced or completed between July 1, 1890 and July 1, 1891, and cases now pending, in which the State is directly interested.

The People vs. the Phœnix Accident and Aid Association.

This case was heard upon the bill taken as confessed in the Wayne circuit. The bill charged that said company was insolvent, and was not conducting its business in compliance with the act under which it was organized. A decree was entered July 25, 1890, that the franchises of the association be forfeited, and that Joseph M. Weiss be appointed receiver, and the affairs of the company wound up.

State of Michigan vs. Edward W. Sparrow, *et al.*

This is an information in chancery to cancel certain patents alleged to have been improvidently issued by the State. A decree was obtained by the State in the Ingham County Circuit Court, and the defendants appealed to the Supreme Court. On June 29, 1891, the case was argued and submitted in the Supreme Court, A. A. Ellis, Attorney General, appearing for the State, and Frank E. Robson and Isaac Marston appearing for the defendants.

Auditor General vs. Adolph Slowman.

This was a petition by the Auditor General under the tax law of 1889, to foreclose a lien for State and County taxes of 1887. A decree was rendered against defendant in the Wayne Circuit Court. He appealed to Supreme Court and decree was affirmed.

The first question involved in this case was the constitutionality of the tax law of 1889. It was alleged that the law was unconstitutional for the following reasons:

First, It provided for advertising and sale of lands before obtaining a decree;

Second, It cut off the right of trial by jury;

Third, It made the rulings of the Circuit Judge on admissions or exclusion of evidence, final;

Fourth, It deprived a party of his day in court;

Fifth, It made the acts of the Court administrative and not judicial.

The Court held the act constitutional, and cited in support thereof 54

Mich., 350; 20 N. W. Rep., 493, where State cases are discussed by Cooley, C. J.

The second question was raised by respondent that the petition did not show the jurisdictional fact that no sale of the lands for the non-payment of taxes had been made as contemplated by section 71 of the tax law of 1889.

As to the form of the petition it was held that it was prescribed by section 52 of said act, and it containing all the statutory requirements, was sufficient.

Reported in 47 N. W. Rep., 565.

Auditor General vs. Lake George & Muskegon River R. R. Co.

This was a bill in chancery to enforce tax lien. Decree was obtained by State and defendant appealed. Decree modified.

Several questions arose in this case;

First, The right of the Auditor General to file the bill. The Court held that he had such right.

Second, Are railroad corporations excluded from the operation of act No. 64 of 1848, which provides for suit in chancery to enforce lien created by statute?

The Court held that they were not so excluded.

Third, Did the remedy by suit in chancery exist?

It was held that sections 1220 and 1221 of Howell's Statutes did authorize such suit.

Fourth, Does the law create a lien on the engines and other rolling stock of the company?

Held, by the Court, that section 3362 *ibid* creates a lien upon the personal property of a corporation.

Fifth, When did the lien attach, and upon what property?

It was decided that the lien attached upon the filing of the Railroad Commissioner's computation with the Auditor General, and that the lien was in the nature of a mortgage, and included all the property of the company.

Sixth, Was the lien of the State lost by the laches of the Auditor General?

The Court held that it was not.

The decree was so modified as to render Hume and Hackley, purchasers of the above named company, liable for the production of the property, which formerly belonged to the defendant company, to satisfy the tax liens for the years 1879 and 1880, and which came to their possession by virtue of the sale; and if they failed so to do, they would be held personally liable for the property destroyed or converted by them.

Reported in 46 N. W. Rep., 730.

Auditor General vs. Serena McLaulin.

This was a petition by the Auditor General for the sale of certain lands claimed to be delinquent. Decree was entered for the defendant in Wayne Circuit Court. Complainant appealed to Supreme Court. Decree affirmed. December 2, 1890, motion for rehearing was submitted.

The only question in this case was whether the Auditor General had a right to charge the one dollar upon land returned delinquent, as authorized

by section 52 of act 195 of the public acts of 1889, when payment was tendered previous to filing of petition, advertisement and sale.

The Court held that the one dollar authorized to be included in the petition, could not be made a charge against the land before advertisement and sale, as there could not be any such costs until after publication of the petition.

Reported in 47 N. W. Rep., 233.

The State of Michigan vs. the Flint & Pere Marquette Railroad Company, *et al.*

This was an information filed by the Attorney General in the Circuit Court of Ingham county against the Flint & Pere Marquette Railway Company and certain other parties, trustees, to quiet the title to certain lands and to obtain an accounting for certain timber sold off from the lands claimed by the State of Michigan.

The case grew out of a dispute between the railroad companies and the State of Michigan relative to the rights of each in certain lands granted by the United States to the State of Michigan. The State of Michigan claiming that the railway company appropriated 15,370 acres of lands granted to this State as swamp lands by the general government by the act of September 28, 1850.

The railway company denied this claim, alleging and claiming that the lands described in the information were not swamp lands, but lands granted by the general government by the act of June 3, 1856, to the State of Michigan as a trustee, and that those lands were afterwards by the State of Michigan granted to the Flint & Pere Marquette Railway Company.

Case heard in the Circuit Court, as stated in a previous report, and the State obtained a decree substantially as asked. The case was appealed to the Supreme Court and argued and submitted at the January term, 1891, and is not yet decided.

SCHEDULE D.

This schedule contains a list of *quo warranto* and other special proceedings, authorized by the Attorney General in the name of the State, but directed by and at the expense of the parties interested.

The People *ex rel.* James Hart *et al.* vs. Lawrence Cain *et al.*

Proceedings dismissed Dec. 24, 1890.

This was an information in the nature of a *quo warranto* filed in the Supreme Court, to test the right to office of certain policemen appointed by the Mayor and Common Council of the city of Adrian.

The information was demurred to by the respondents and the demurrer was sustained, and the proceedings dismissed with costs against the relators.

The Court held that under the provisions of the charter of the city of Adrian, the position of policeman was not an "office" within section 21 providing that all officers appointed by the Mayor or Council shall, with certain exceptions, hold office till the ensuing May; and that the position of policeman was not such an office as would authorize an information by *quo warranto* by the Attorney General to test title to the office.

Reported in 47 N. W. Rep., 484.

Attorney General vs. Isaac B. Newcombe *et al.*

An information was filed in this case July 1, 1890, against the Michigan Gas Company of Detroit, Mich. Various pleadings were filed and on Sept. 23, 1890, defendant filed affidavit of non-filing of replication and default was entered against the relators.

Attorney General vs. William H. Lennon. *Quo warranto.*

An information in this case was filed in the Supreme Court by the Attorney General to test the right of the respondent to the office of chief of police of West Bay City.

Defendant was elected alderman of West Bay City for the term of two years. During his incumbency the office of chief of police was created. Nearly a year before the period for which he had been elected had expired, he resigned the office of alderman, and was appointed by the Common Council chief of police.

Two questions arose.

First, Was the office of chief of police under this charter, one which was properly the subject of this proceeding?

The Court held that under the charter the chief of police of West Bay City was a public officer and a proper subject of *quo warranto* proceedings, referring to the case of the People vs. Cain, 47 N. W. Rep., 484, as clearly distinguishable from the one under consideration.

Second, Was the respondent eligible at the time of his appointment?

The charter of the city provides that "No alderman shall be elected or appointed to any other office in the city during the term for which he was elected as alderman." Under this section of the charter, which is substantially the same as section 18 of article 4 of the constitution, the Court held that respondent was ineligible for appointment during the two years for which he was elected, and that these various provisions of the laws and constitution were not to limit the prohibition to the term of actual service, but to "the term for which he was elected" or for the period of two years from and after his election.

Reported in 49 N. W. Rep., 308.

QUO WARRANTO PROCEEDINGS PENDING.

Attorney General *ex rel.* Alfred Russell vs. Fleetwood Ward, *et al.*

This was an information filed in the Supreme Court the 7th day of December 1889, by the Attorney General, upon the relation of Alfred Russell of the city of Detroit, to test the right of the respondent to use and enjoy certain liberties, privileges and franchises, to-wit; that of being a body corporate by the name of the "Detroit Computing Scale Company" and also that of the manufacture and sale of weighing and price scales under the Pitrat patent, and the manufacture and sale of scales in general.

Said company claimed to be organized under and by virtue of act No. 232 of the public acts of 1885.

Attorney General *ex rel.* William H. Wilson vs. Pierre E. Witherspoon.

This was an information in the nature of a *quo warranto* filed September 7, 1889, to test the right of Pierre E. Witherspoon of the village of Harrison, Clare county, Michigan, to hold the office of village president of said village of Harrison.

The People of the State of Michigan vs. The Detroit & Saline Plank Road Company.

At the October term, 1890, the Supreme Court refused the Attorney General's application to file an information in the nature of a *quo warranto* against the respondents, basing their ruling upon the case of the People vs. Detroit & Howell Plank Road Company, 43 Mich., 140. The application, however, was renewed through a motion for a rehearing, and after a more thorough examination of the petition in this case and the Detroit & Howell Plank Road decision and the record, the court became satisfied that issues were presented upon this application which were not involved nor decided in the case referred to; and thereupon granted leave to file an information to test the right of the respondents to exercise and enjoy the liberties and privileges of levying, collecting and receiving tolls from all persons with vehicles, carriages, sleds, etc., using a certain road or highway from Woodward avenue in the city of Detroit to the village of Saline in the county of Washtenaw.

The People *ex rel.* Robert G. Elliott vs. Walter Bell.

This was an information in the nature of a *quo warranto* filed in the Supreme Court May 27, 1890 by the Attorney General upon the relation of Robert G. Elliott, to test the right of the respondent to hold the office of supervisor in the township of Burt, in the county of Alger and State of Michigan.

The People *ex rel.* Joseph M. Fuller vs. Lucian C. Palmer.

This was an information filed May 9, 1891, to test the right of the respondent to hold the office of Judge of Probate in the county of Montcalm.

The People *ex rel.* John R. McDonald, relator and appellant, vs. the Board of Supervisors of Alcona county *et al.*, defendants and appellees.

This is an information filed in the Circuit Court for the county of Alcona by John R. McDonald against the board of supervisors of Alcona county, questioning the right of the board of supervisors to sell certain portions of the "county farm" of the county to members of the said board.

The respondents demurred to the information, and the Circuit Judge sustained the demurrer.

On Feb. 24, 1891, a writ of error was taken out, and the case brought to Supreme Court.

The Attorney General *ex rel.* George C. Lawrence, relator, vs. David Trombly, respondent.

This is an information in the nature of a *quo warranto* filed May 22, 1891, by the Attorney General upon the relation of George C. Lawrence, a resident freeholder and taxpayer of the county of Wayne, to test the right of the respondent, David Trombly, of the said county of Wayne, to hold the office of auditor of the county of Wayne.

SCHEDULE E.

This schedule contains a list of all chancery cases commenced or determined between July 1, 1890 and July 1, 1891, or pending in which some State officer has been made a party, and in which the State has some interest. These cases have been by the Attorney General referred to the Prosecuting Attorneys of the various counties in which they are pending, and left in their charge.

Eugene Carmel vs. Auditor General, *et al.*
Bill in chancery in Bay county.

John Banks vs. Henry H. Aplin, Auditor General, *et al.*
Bill in chancery in Sanilac county.

John Hegler vs. Auditor General *et al.*
Bill in chancery in Sanilac county.

John O'Neal *et al.* vs. Auditor General *et al.*
Bill in chancery in Saginaw county.

John M. Longyear *et al.* vs. Auditor General *et al.*
Bill in chancery for the county of Iron.

The Lake Superior Ship Canal Railway Company *et al.* vs. the Township of Carp Lake, *et al.*
Bill in chancery in Ontonagon county.

The Lake Superior Ship Canal Railway Company *et al.* vs. the Township of Bessemer *et al.*
Bill in chancery in Gogebic county.

H. Whitbeck Company *et al.* vs. Township of Menominee *et al.*
Bill in chancery in Menominee county.

H. Whitbeck Company *et al.* vs. the Township of Norway *et al.*
Bill in chancery in Menominee county.

Eugene M. Joslin *et al.* vs. City of Saginaw *et al.*
Bill in chancery in Saginaw county.

The Lake Superior Ship Canal Railway & Iron Co. vs. the Township of Hancock *et al.*
Bill in chancery in Houghton county.

Henry Steller *et al.* vs. City of Saginaw *et. al.*
Bill in chancery for Saginaw county.

Henry Bernhard *et al.* vs. City of Saginaw *et al.*
Bill in chancery, Saginaw Circuit Court.

Alexander Arcon *et al.* vs. City of Saginaw *et al.*
Bill in chancery, Saginaw Circuit Court.

Attorney General *ex rel.* E. W. Voight *et al.* vs. The Detroit, Birmingham Plank Road Company.
Bill to enjoin collection of toll. This is without expense to the State.

George F. Gillman, as Adm'r, vs. George M. Dayton, *et al.*

Bill in chancery for Ingham County Circuit Court, wherein Edwin B. Winans, Governor, and Daniel E. Soper, Secretary of State, are made nominal defendants.

Frank M. Clay Exr. vs. Auditor General.

Bill in chancery for Gratiot Circuit Court.

A. C. Maxwell vs. Auditor General.

Bill to restrain payment of certain moneys, Roscommon Circuit Court.

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SCHEDULE F.

This schedule contains a statement of all moneys received by the Attorney General by way of debts due or penalties forfeited to the people of this State, or otherwise, and which have been paid into the State treasury, including the titles of all actions and proceedings in which said moneys were received:

In the matter of Austin Mereness, an indigent soldier.

Austin Mereness was on the 9th day of September, 1875, admitted to the Kalamazoo asylum by an order of the State military board, under and by virtue of Act No. 8 of the Public Acts of 1875, to be there maintained at the expense of the State as an indigent soldier.

In 1888 Mereness obtained a pension amounting to about thirteen thousand dollars, together with $72 per month for each month thereafter. In the spring of 1891, the Attorney General obtained an order of the military board setting aside their order of September 9, 1875; subsequently the friends of Mereness, who resided in Wisconsin, desired his transfer. The Attorney General made a claim against his property for his care and maintenance during the time he was in the asylum.

After a consultation with the Governor, it being an open question as to whether the State had a valid legal claim, the Attorney General, on the recommendation of the Governor, compromised the claim for $1,250.

SCHEDULE G.

This schedule contains a list of insurance companies whose articles of association or amendments thereto were approved by the Attorney General between July 1, 1890, and July 1, 1891:

Farmers' Mutual Fire Insurance Company of Otsego, Crawford and Roscommon counties. Charter approved July 11, 1890.

Saginaw Valley Mutual Fire Insurance Company. Charter approved August 29, 1890.

Farmers' Mutual Fire Insurance Company of Ionia county. Amendments approved January 20, 1891.

Michigan Mutual Live Stock Insurance Company of Cadillac. Charter approved March 18, 1891.

Detroit Fire and Marine Insurance Company. Amendments approved March 25, 1891.

Independent Order of Foresters of the United States. Charter approved March 29, 1891.

People's Mutual Fire Insurance Company of Ionia, Montcalm and Clinton counties. Amendments approved April 7, 1891.

Michigan Mutual Live Stock Insurance Association. Charter approved April 28, 1891.

People's Mutual Live Stock Insurance Company of Michigan. Charter approved April 30, 1891.

German Farmers' Mutual Fire Insurance Association of Wayne and Macomb counties. Amendments approved May 5, 1891.

Farmers' Mutual Fire Insurance Company of Alcona, Alpena and Montmorency counties. Charter approved June 15, 1891.

SCHEDULE H.

Total number prosecutions, 15,747; total number convictions, 9,812.

Charged with.	No.	Result and Punishment.
Abduction	10	Seven dismissed; 3 pending.
Abortion	4	Two convicted; 1 dismissed; 1 pending; 1 sentenced to the Detroit House of Correction for 1 year; 1 sentence suspended.
Adultery	79	Six convicted; 6 acquitted; 35 dismissed; 28 pending; 4 recognizance forfeited; 6 sentenced as follows: 1 fined $200; 1 sent to the county jail for 6 months; 1 sent to the Detroit House of Correction for 1 year; 1 sent to the State House of Correction 1 year; 1 sent to the State Prison at Marquette for 1 year; 1 sent to the State Prison at Jackson for 2 years.
Aiding and assisting prisoners to escape	7	Three convicted; 1 acquitted; 2 dismissed; 1 pending; 3 sentenced as follows: 1 fined $25; 1 sent to the county jail for 90 days; 1 sent to the State Prison at Jackson for 3 years.
Arson	40	Three convicted; 8 acquitted; 18 dismissed; 11 pending; 3 sentenced as follows: 2 sent to the State Prison at Jackson for 8 years, and 1 for 10 years.
Assault and battery	2,504	One thousand six hundred ninety-five convicted; 306 acquitted; 455 dismissed; 30 pending; 15 appeals; 3 escapes; 69 sentence suspended; 1,626 sentenced as follows: 127 fined costs; 121 fined $1; 70 fined $2; 65 fined $3; 38 fined $4; 454 fined $5; 8 fined $6; 11 fined $7; 6 fined $8; 1 fined $9; 186 fined $10; 69 fined $15; 44 fined $20; 41 fined $25; 6 fined $30; 2 fined $35; 3 fined $40; 1 fined $45; 10 fined $50; 3 fined $75; 1 fined $80; 3 fined $100; 110 sent to the county jail for 10 days; 22 for 15 days; 19 for 20 days; 102 for 30 days; 4 for 40 days; 20 for 60 days; 9 for 90 days; 5 sent to the Reform School; 17 sent to the Detroit House of Correction for 60 days, and 44 for 90 days; 7 sent to the State House of Correction at Ionia for 90 days; 1 sent to the State Prison at Marquette for 60 days, and 2 for 90 days.
Assault with intent to do great bodily harm, less than the crime of murder	136	Forty-three convicted; 12 acquitted; 35 dismissed; 2 appeals; 44 pending; on 3 sentence suspended; 40 sentenced as follows: 1 fined $15; 1 fined $25; 1 fined $30; 1 fined $40; 8 fined $50; 2 fined $75; 2 fined $100; 1 sent to the county jail for 30 days, 1 for 40 days, 1 for 60 days, 6 for 90 days; 1 sent to the Reform School; 1 sent to the Detroit House of Correction for 90 days; 2 sent to the State House of Correction at Ionia for 1 year, 2 for 2 years, 1 for 10 years; 2 sent to the State Prison at Marquette for 3 years, and 1 for 5 years; 1 sent to the State Prison at Jackson for 2 years, 1 for 3 years, 2 for 5 years, and 1 for 6 years.
Assault with intent to commit rape	56	Sixteen convicted; 1 acquitted; 16 dismissed; 23 pending; 16 sentenced as follows: 1 fined $75; 1 sent to the State House of Correction at Ionia for 90 days, 1 sent for 1 year, 1 sent for 2 years, 1 sent for 3 years; 1 sent to the Detroit House of Correction for 5 years; 1 sent to the State Prison at Marquette for 1½ years, 1 sent for 5 years, 1 sent for 10 years; 1 sent to the State Prison at Jackson for 3 years, 1 sent for 5 years, 1 sent for 7 years, 2 for 8 years, and 2 for 10 years.

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
Assault (simple)	58	Twenty-seven convicted; 3 acquitted; 17 dismissed; 4 pending; 1 appeal; 1 bond forfeited; 3 sentence suspended; 24 sentenced as follows: 1 fined costs; 2 fined $1; 1 fined $3; 7 fined $5; 1 fined $6; 1 fined $8; 1 fined $10; 1 fined $20; 1 sent to the county jail for 10 days, 1 sent for 25 days, 2 sent for 30 days; 1 sent to the Reform School; 1 sent to the Detroit House of Correction for 60 days, and 3 sent for 90 days.
Assault with intent to murder	60	Fifteen convicted; 11 acquitted; 10 dismissed; 24 pending; on 1 sentence suspended; 14 sentenced as follows: 1 fined $25; 3 sent to the county jail for 3 months; 1 sent to the Traverse City asylum; 2 sent to the Detroit House of Correction for 90 days; 1 sent to the State Prison at Marquette for 4½ years, 2 sent for 5 years; 1 sent to the State Prison at Jackson for 1½ years, 2 sent for 5 years, and 1 for life.
Assault with deadly weapon	30	Fourteen convicted; 5 acquitted; 7 dismissed; 4 pending; 2 sentence suspended; 12 sentenced as follows: 2 fined $100; 1 fined $175; 1 sent to the Detroit House of Correction for 1 year; 2 sent to the State House of Correction at Ionia for 90 days; 1 sent to the State Prison at Marquette for 21 months; 2 sent to the State Prison at Jackson for 3 years, 2 sent for 5 years, and 1 sent for 7 years.
Assault with intent to maim	3	One acquitted; 1 dismissed; 1 defendant died.
Assault with intent to commit robbery	2	One convicted; 1 pending; 1 sentenced to State Prison at Jackson for 2½ years.
Attempts to escape	1	One convicted and sentenced to the Detroit House of Correction for 75 days.
Attempts to commit larceny	6	Two convicted; 1 dismissed; 3 pending; on 1 sentence suspended; 1 sent to the State Prison at Jackson for 6 months.
Attempts to commit murder	9	Three convicted; 3 acquitted; 1 dismissed; 2 pending; 3 sentenced as follows: 1 sent to the State Prison at Jackson for 2 years, 1 sent for 4 years, and 1 sent for 6 years.
Attempts to commit burglary	2	Two convicted and sentenced as follows: 1 sent to the Detroit House of Correction for 2 years; and 1 sent to the State Prison at Jackson for 3 years.
Bastardy	132	Eleven convicted; 5 acquitted; 19 dismissed; 2 escapes; 38 pending; 57 compromised; 6 gave bonds to support child; 3 sentenced as follows: 1 fined $300; 1 fined $500, and 3 sent to the county jail.
Being present at a cock-fight	12	Convicted and fined $5 each.
Bigamy	21	Seven convicted; 1 acquitted; 1 appeal; 12 pending; 7 sentenced as follows: 1 sent to the Detroit House of Correction for 10 months, 1 sent for 1 year; 1 sent to the State Prison at Ionia for 2 years; 1 sent to the State Prison at Marquette for 4½ years; 2 sent to the State Prison at Jackson for 2 years; 1 sent for 5 years.
Blasphemy	8	Seven convicted; 1 dismissed; 7 sentenced as follows: 2 fined $1; 1 fined $3; 1 fined $5; 2 fined $10; 1 sent to the county jail for 30 days.
Breaking and entering building in the night time with felonious intent	41	Twelve convicted; 9 acquitted; 1 dismissed; 19 pending; 1 suspended sentence; 1 awaiting sentence; 10 sentenced as follows: 1 sent to the Detroit House of Correction for 3 months, 1 sent for 6 months, 1 sent for 1 year, 1 sent for 2 years, 2 sent for 5 years; 1 sent to the State House of Correction at Ionia for 5 years; 1 sent to the State Prison at Jackson for 1½ years, and 2 sent for 3 years.

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
Breaking and entering building in the daytime with felonious intent	27	Eight convicted; 7 acquitted; 5 dismissed; 7 pending; 5 suspended sentence; 3 sentenced as follows: 1 fined costs; 1 sent to the county jail for 30 days; 1 sent to the State House of Correction at Ionia for 6 months.
Breaking and entering railroad car to obtain passage	18	Six convicted; 2 acquitted; 6 dismissed; 4 pending; 4 sentence suspended; 2 sent to the county jail for 90 days.
Breaking boat fastenings	8	Six convicted; 2 dismissed; 4 sentenced as follows: 3 fined $3 and 3 fined $10.
Breaking jail	1	Convicted and sent to the State House of Correction at Ionia for 11 months.
Breach of the peace	19	Sixteen convicted; 1 acquitted; 1 dismissed; 1 pending; 1 suspended sentence; 15 sentenced as follows: 1 fined $1; 1 fined $4; 12 fined $5; 1 fined $10.
Bribery	8	All dismissed.
Buggery	4	All dismissed.
Burglary	256	One hundred and forty-seven convicted; 13 acquitted; 40 dismissed; 50 pending; 4 escapes; 14 suspended sentence; 2 killed while attempting to break jail; 133 sentenced as follows: 5 sent to the county jail for 30 days, and 3 sent for 60 days; 7 sent to the Reform School; 1 sent to the Detroit House of Correction for 3 months, and 1 sent for 3 years; 1 sent to the State Prison at Marquette 1½ years, 2 sent for 2 years, and 2 sent for 2½ years, 2 sent for 3 years, 1 sent for 5 years; 2 sent to the State House of Correction for 3 months, 6 sent for 6 months, 4 sent for 9 months, 10 sent for 1 year, 5 sent for 1½ years; 6 sent for 2 years, 1 sent for 2½ years, 4 sent for 3 years, 2 sent for 4 years, 1 sent for 10 years; 1 sent to State Prison at Jackson 6 months, 1 sent for 10 months, 6 sent for 1 year, 6 sent for 1½ years, 5 sent for 2 years, 9 sent for 3 years, 2 sent for 3½ years, 5 sent for 4 years, 14 sent for 5 years, 4 sent for 6 years, 6 sent for 7 years, 1 sent for 7½ years, 1 sent for 8 years, 3 sent for 9 years, 3 sent for 10 years.
Careless use of fire-arms	15	Six convicted; 1 acquitted; 7 dismissed; 1 pending; 1 awaiting sentence; 5 sentenced as follows: 3 fined $5; 2 fined $10.
Carnal knowledge of girl between 14 and 16 years of age	9	Four convicted; 1 acquitted; 1 dismissed; 3 pending; 1 bond estreated; 3 sentenced as follows: 1 sent to the State House of Correction for 1 year, 1 sent for 2 years, 1 sent to the State Prison at Jackson for 3 years.
Carrying concealed weapons	74	Sixty-one convicted; 9 acquitted; 2 dismissed; 2 appeals; 3 sentence suspended; 58 sentenced as follows: 1 fined $1; 2 fined $3; 4 fined $5; 6 fined $10; 1 fined $20; 3 sent to the county jail for 10 days, 2 sent for 15 days, 2 sent for 25 days, 7 sent for 30 days, 3 sent for 60 days, 1 sent for 90 days; 2 sent to the Reform School; 1 sent to the Detroit House of Correction for 30 days, and 2 sent for 90 days.
Conspiracy	27	Four acquitted; 14 dismissed; 9 pending.
Contempt of court	3	Convicted; 2 fined $10, and 1 sent to the county jail for 3 days.
Cruelty to animals	90	Fifty-nine convicted; 16 acquitted; 13 dismissed; 2 pending; 1 sentence suspended; 58 fined as follows: 8 fined costs; 6 fined $2; 2 fined $3; 18 fined $5; 6 fined $10; 6 fined $15; 3 fined $25; 1 sent to the county jail for 5 days, 2 sent for 10 days; 4 sent for 15 days, 1 sent for 60 days, 1 sent for 90 days.

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
Counterfeiting	1	Dismissed.
Defacing building	2	Convicted; 1 fined $10, and 1 fined $15.
Defrauding hotel-keeper	46	Twenty-six convicted; 10 acquitted; 8 dismissed; 2 pending; 3 suspended sentence; 23 were sentenced as follows: 3 fined costs; 1 fined $1; 1 fined $5; 1 fined $10; 1 fined $20; 1 fined $50; 3 sent to the county jail for 10 days, 3 sent for 20 days, 6 sent for 30 days, 2 sent for 40 days, and 1 sent for 60 days.
Desecrating cemetery grounds	2	Convicted and sentence suspended.
Disbarment	1	Acquitted.
Disposing of chattel mortgaged property with intent to defraud	38	Five convicted; 8 acquitted: 18 dismissed: 7 pending; 5 were fined as follows: 3 fined $5; 1 fined $15; 1 fined $30.
Disturbing public school	6	Two convicted; 3 dismissed; 1 acquitted; 2 were sentenced as follows: 1 fined $10; 1 sent to the county jail for 30 days.
Disturbing religious meeting	69	Fifty-nine convicted; 7 acquitted; 3 dismissed; 6 suspended sentence; 56 were sentenced as follows: 6 fined $1; 5 fined $2; 1 fined $3; 1 fined $4; 18 fined $5; 4 fined $8; 4 fined $10; 1 sent to the county jail for 5 days, 3 sent for 10 days, 1 sent for 15 days, 2 sent for 20 days, 7 sent for 30 days.
Disorderly	6,346	
Classified as follows:		
(*a*) Common prostitutes	115	Ninety-three convicted; 8 acquitted; 9 dismissed; 5 pending; 2 gave bonds for good behavior; sentence suspended on 3; 88 were sentenced as follows: 3 fined costs; 3 fined $5; 12 fined $10; 1 fined $20; 51 fined $25; 1 fined $50; 1 sent to county jail for 15 days, 3 sent for 20 days, 6 sent for 30 days; 4 sent to the State Industrial School for Girls; 3 sent to the Detroit House of Correction for 90 days.
(*b*) Drunkards and tipplers	76	Sixty-six were convicted; 2 acquitted; 4 dismissed; 4 pending; 1 escaped; 1 gave bonds for good behavior; sentence suspended on 2; 63 were sentenced as follows: 1 fined costs; 3 fined $5; 1 fined $6; 33 fined $10; 6 fined $15; 1 fined $40; 3 sent to county jail for 10 days, 3 sent for 15 days, 1 sent for 25 days; 4 sent for 30 days; 5 sent to the Detroit House of Correction for 60 days, 1 sent for 90 days; 1 sent to the State House of Correction for 90 days.
(*c*) Drunks	2,114	Two thousand thirty-eight were convicted; 40 acquitted; 29 dismissed; 1 appeal; 6 pending; 135 sentence suspended; 1,968 were sentenced as follows: 174 fined costs; 158 fined $1; 106 fined $2; 149 fined $3; 15 fined $4; 213 fined $5; 4 fined $6; 8 fined $7; 2 fined $8; 1 fined $9; 87 fined $10; 7 fined $15; 9 fined $20; 1 fined $25; 19 fined $30; 2 fined $50; 106 sent to county jail for 3 days, 95 sent for 5 days, 228 sent for 10 days, 93 sent for 15 days, 214 sent for 20 days, 15 sent for 25 days, 177 sent for 30 days, 8 sent for 60 days, 3 sent for 90 days; 4 sent to the Detroit House of Correction for 60 days; 1 sent to the State House of Correction for 30 days, 1 sent for 2 years.
(*d*) Drunk and disorderly	496	Four hundred and fifty-two were convicted; 11 acquitted; 27 dismissed; 6 pending; 2 gave bonds for good behavior; sentence suspended on 12; 438 were sentenced as follows: 6 were fined costs; 71 fined $1; 15 fined $2; 7 fined $3; 3 fined $4; 80 fined $5; 3 fined $6; 5 fined $7; 6 fined $8; 19 fined $10; 1 fined $12; 4 fined $15; 3 fined $20; 9 fined $25; 1 fined $30; 4 sent to the county jail for 5 days, 38 sent for 10 days, 25 sent for 15 days, 23 sent for 20 days, 19 sent for 25 days, 72 sent for 30 days, 2 sent for 40 days; 12 sent for 60 days; 1 sent to the Reform School; 1 sent to the State Industrial School for Girls; 1 sent to the Detroit House of Correction for 30 days; 6 sent for 60 days; 1 sent for 90 days.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
(*e*) Fortune tellers	1	Sentence suspended.
(*f*) Gamesters and keepers of gaming rooms.	56	Thirty-seven were convicted; 5 acquitted; 2 dismissed; 12 are pending; sentence suspended on 1; 36 were fined as follows: 7 fined costs; 1 fined $2, 1 fined $4; 3 fined $5; 5 fined $10; 3 fined $15; 6 fined $20; 2 fined $25; 1 fined $50; 2 fined $250; 4 sent to the county jail for 10 days; 1 sent for 15 days.
(*g*) Non-support of family	64	Twenty-six were convicted; 8 acquitted; 28 dismissed; 2 are pending; 12 gave bonds for support; sentence suspended on 4; 10 were sentenced as follows: 1 fined $2; 1 sent to county jail for 20 days; 2 sent for 30 days; 1 sent for 40 days; 1 sent for 60 days; 3 sent for 90 days; 1 sent to the State House of Correction for 30 days.
(*h*) Unclassified	2,956	Two thousand five hundred and eight were convicted; 86 acquitted; 346 dismissed; 2 appeals; 14 are pending; 14 gave bonds for good behavior; 518 sentence suspended; 1,976 were sentenced as follows: 72 fined costs; 69 fined $1; 77 fined $2; 87 fined $3; 4 fined $4; 102 fined $5; 2 fined $6; 1 fined $7; 12 fined $8; 51 fined $10; 1 fined $12; 2 fined $15; 5 fined $20; 13 fined $25, 2 fined $40; 10 fined $50; 51 sent to the county jail for 3 days; 305 sent for 5 days; 330 sent for 10 days; 163 sent for 15 days; 197 sent for 20 days; 8 sent for 25 days; 194 sent for 30 days; 2 sent 40 days; 12 sent for 60 days; 9 sent for 90 days; 28 sent to the Reform School; 15 sent to the State Industrial School for Girls; 1 sent to the Detroit House of Correction for 30 days; 23 sent for 60 days; 105 sent for 90 days; 1 sent for 6 months; 4 sent to the House of Correction for 60 days; 18 sent for 90 days; 14 sent for 100 days; 8 sent for 6 months; 1 sent for 9 months; 4 sent to the State Prison at Marquette for 30 days, 2 sent for 60 days, 21 sent for 90 days.
(*i*) Vagrants	466	Four hundred and twenty-nine were convicted; 3 acquitted; 34 dismissed; 51 sentence suspended; 378 were sentenced as follows: 95 fined $5; 3 sent to the county jail for 3 days; 24 sent for 5 days; 98 sent for 10 days; 25 sent for 15 days; 17 sent for 20 days; 11 sent for 25 days; 60 sent for 30 days; 19 sent for 60 days; 4 sent for 90 days; 9 sent to the State House of Correction for 30 days; 6 sent to the Detroit House of Correction for 60 days; 3 sent for 90 days; 1 sent to the State Prison at Marquette for 60 days; 3 sent for 90 days.
Embezzlement	87	Eighteen were convicted; 9 acquitted; 39 dismissed; 21 pending; 6 sentence suspended; 12 were sentenced as follows: 1 fined $5; 1 fined $25; 2 fined $100; 1 sent to the county jail for 30 days; 2 sent for 60 days; 1 sent for 90 days; 1 sent to the Detroit House of Correction for 5 years; 1 sent to the State House of Correction for 90 days; 1 sent to State Prison at Jackson for 1 year; 1 sent for 3 years.
Entering building in the night-time without breaking	5	Two convicted; 3 pending; 1 sent to the State House of Correction at Ionia for 2 years; 1 sent to the State Prison at Jackson for 5 years.
Enticing female to enter house of ill-fame	4	Three dismissed; 1 pending.
Exposing and abandoning infant child	2	One convicted; 1 pending; suspended sentence.
False pretenses	105	Twenty-one convicted; 12 acquitted; 44 dismissed; 28 pending; 1 sentence suspended; 1 awaiting sentence; 19 sentenced as follows: 1 fined $30; 2 fined $75; 1 fined $150; 1 sent to the Detroit House of Correction for 6 months; 1 sent for 1 year; 1 sent for 2 years; 1 sent to the State House of Correction at Ionia for 3 months; 2 sent for 4 months; 1 sent for 6 months; 1 sent for 1 year; 1 sent for 2 years; 1 sent for 3 years; 1 sent to State Prison at Marquette for 2 years; 1 sent for 3 years; 1 sent to the State Prison at Jackson 6 months; 1 sent for 1 year; 1 sent for 1½ years.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
Forgery	88	Forty-two convicted; 6 acquitted; 7 dismissed; 28 pending; on 8 sentence suspended; 2 awaiting sentence; 32 are sentenced as follows: 1 sent to the county jail for 60 days; 1 sent for 90 days; 1 sent to the Detroit House of Correction for 2 years; 1 sent to the State House of Correction at Ionia for 3 months; 4 sent for 6 months; 3 sent for 1 year; 1 sent for 1½ years; 6 sent for 2 years; 2 sent for 2½ years; 1 sent for 3 years; 1 sent for 3½ years; 1 sent to the State Prison at Marquette for 1 year; 1 sent for 2 years; 1 sent for 3 years; 2 sent to the State Prison at Jackson for 1 year; 2 sent for 3 years; 1 sent for 3½ years; 1 sent for 4 years; 1 sent for 5 years.
Furnishing false pedigree	1	Pending in the Supreme Court.
Furnishing tobacco to minors	4	Four convicted; on 1 sentence suspended; 3 fined $5.
Illegal practice of dentistry	3	Two convicted; 1 dismissed; 2 fined $25.
Illegal voting	2	One convicted; 1 dismissed; 1 sent to the county jail for 30 days.
Importing paupers	1	Pending.
Incest	18	Five convicted; 4 acquitted; 4 dismissed; 5 pending; 2 sentence suspended; 3 sentenced as follows: 1 sent to the State House of Correction at Ionia for 6 years; 1 sent to the State Prison at Jackson for 2½ years; 1 sent for 6 years.
Indecent liberties with girl under sixteen	6	Three convicted; 3 pending; 3 sentenced as follows: 1 sent to the State House of Correction for 2 years; 1 sent to the State Prison at Jackson for 2 years; 1 sent for 3 years.
Indecent exposure	26	Eleven convicted; 3 acquitted; 3 dismissed; 9 pending; 11 fined as follows: 1 fined $5; 1 fined $25; 1 fined $100; 1 sent to the county jail for 15 days; 1 sent for 30 days; 1 sent for 60 days; 1 sent to the Detroit House of Correction for 6 months; 1 sent to the State House of Correction for 3 months; 2 sent for 1 year; 1 sent to State Prison at Jackson for 2½ years.
Jumping on moving train	8	Seven convicted; 1 dismissed; on 1 sentence suspended; 6 fined $2.
Keeping house of ill-fame	78	Thirty-one convicted; 5 acquitted; 27 dismissed; 15 pending; 2 gave bonds for good behavior; 3 recognizance forfeited; 2 suspended sentence; 24 sentenced as follows: 1 fined $10; 8 fined $25; 2 fined $50; 1 fined $100; 1 fined $175; 1 sent to the county jail for 15 days; 1 sent for 20 days; 2 sent to the Detroit House of Correction for 90 days; 3 sent for 1 year; 1 sent for 1¼ years; 1 sent to the State House of Correction for 2½ years; 1 sent to State Prison at Marquette for 6 months; 1 sent to State Prison at Jackson for 2 years.
Larceny	2,487	
Classified as follows:		
(*a*) Compound	5	Three dismissed; 2 pending.
(*b*) From the person	72	Thirty-three convicted; 7 acquitted; 11 dismissed; 21 pending; 1 suspended sentence; 32 sentenced as follows: 1 fined $10; 1 sent to the county jail for 60 days; 1 sent to the Detroit House of Correction for 6 months; 3 sent for 2 years; 1 sent to the State House of Correction for 6 months; 2 sent for 1 year; 2 sent for 2 years; 1 sent for 2¼ years; 2 on indeterminate sentence; 2 sent to the State Prison at Marquette for 2½ years; 1 on indeterminate sentence; 1 sent to the State Prison at Jackson 4 months; 1 sent for 6 months; 2 sent for 1 year; 1 sent for 2 years; 1 sent for 2¼ years; 5 sent for 3 years; 1 sent for 3½ years; 3 sent for 5 years,

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
(c) From building in the daytime	77	Forty-three convicted; 2 acquitted; 11 dismissed, 21 pending; 11 suspended sentence; 32 sentenced as follows: 1 sent to the county jail for 60 days; 1 sent to the Detroit House of Correction for 1 year, 1 sent for 2 years, 2 sent to the State House of Correction for 4 months, 3 sent for 6 months, 1 sent for 9 months, 4 sent for 1 year, 1 sent for 1½ years, 5 sent for 2 years, 1 sent for 2¼ years, 1 sent for 4 years, 2 sent for 5 years; 1 sent to the State Prison at Jackson for 4 months, 1 sent for 6 months, 2 sent for 1½ years, 1 sent for 3½ years, 1 sent for 4 years, 2 sent for 5 years; 1 sent to the State Prison at Marquette for 2 years.
(d) From building in the night time	20	Seventeen convicted; 1 dismissed; 2 escapes; 17 sentenced as follows: 1 sent to the county jail for 10 days; 1 sent to the Reform School at Lansing for 90 days; 1 sent to the State House of Correction at Ionia for 3 months, 2 sent for 9 months, 1 sent for 2 years; 4 sent to the State Prison at Jackson for 6 months, 1 sent for 9 months, 2 sent for 2½ years, 1 sent for 3 years, 1 sent for 4 years, 1 sent for 9 years.
(e) From railroad car	5	One convicted; 1 acquitted; 1 dismissed; 2 escapes; 1 sentenced to the State Prison at Marquette for 2 years.
(f) Of horse	19	Eleven convicted; 1 acquitted; 4 dismissed; 3 pending; 11 sentenced as follows: 3 sent to the State House of Correction at Ionia on indeterminate sentence; 1 sent for 6 months; 1 sent for 2 years, 2 sent for 3 years, 1 sent for 5 years; 3 sent to the State Prison at Jackson for 4 years.
(g) Of less than $25	905	Six hundred and twenty-seven convicted; 146 acquitted; 129 dismissed; 3 pending; 38 suspended sentence; 589 sentenced as follows: 9 fined costs; 34 fined $1; 2 fined $2; 5 fined $3; 42 fined $5; 2 fined $7; 51 fined $10; 11 fined $15; 5 fined $20; 7 fined $25; 3 fined $30; 1 sent to the county jail for 2 days, 6 sent for 5 days, 52 sent for 10 days, 10 sent for 15 days, 31 sent for 20 days, 1 sent for 25 days, 90 sent for 30 days, 6 sent for 40 days, 7 sent for 60 days, 62 sent for 90 days; 34 sent to the Reform School at Lansing; 3 sent to the Industrial Home at Adrian; 43 sent to the Detroit House of Correction for 60 days, 60 sent for 90 days; 1 sent to the State House of Correction at Ionia for 60 days, 2 sent for 90 days.
(h) Of more than $25	164	Fifty-four convicted; 24 acquitted; 31 dismissed; 54 pending; 1 forfeits recognizance; 5 suspended sentence; 48 sentenced as follows: 1 fined $5; 1 fined $100; 1 fined $200; 3 sent to the county jail for 30 days, 2 sent for 90 days; 1 sent to the Detroit House of Correction for 3 months, 1 sent for 4 months, 1 sent for 9 months; 2 sent to the State House of Correction on indeterminate sentence, 2 sent for 6 months, 3 sent for 1 year, 2 sent for 1½ years, 2 sent for 2 years, 1 sent for 3 years; 1 sent to the State Prison at Marquette for 1½ years; 4 sent to the State Prison at Jackson 9 months, 3 sent for 1 year, 2 sent for 1½ years, 4 sent for 2 years, 1 sent for 2½ years, 3 sent for 3 years, 3 sent for 4 years, 2 sent for 4½ years, 3 sent for 5 years.
(i) Of timber	2	One dismissed; 1 pending.
(j) Unclassified	1,218	Five hundred and forty-nine convicted; 131 acquitted; 478 dismissed; 60 pending; 66 suspended sentence; 7 escapes; 483 sentenced as follows: 5 fined costs; 20 fined $1; 8 fined $3; 32 fined $5; 4 fined $8; 24 fined $10; 4 fined $15; 4 fined $20; 21 fined $25; 6 fined $30; 2 fined $40; 8 fined $50; 2 fined $100; 16 sent to the county jail for 10 days, 3 sent for 15 days, 21 sent for 20 days, 46 sent for 30 days, 7 sent for 40 days, 1 sent for 50

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
(*j*) Unclassified—*Continued*		days, 34 sent for 60 days, 17 sent for 90 days; 44 sent to the Reform School at Lansing; 8 sent to the Industrial Home at Adrian; 19 sent to the Detroit House of Correction for 60 days, 1 sent for 75 days, 46 sent for 90 days, 2 sent for 1 year; 1 sent to the State House of Correction at Ionia for 30 days, 16 sent for 3 months, 1 sent for 4 months, 2 sent for 6 months, 1 sent for 9 months, 6 sent for 1 year, 2 sent for 1½ years, 4 sent for 2 years, 1 sent for 2½ years, 3 sent for 3 years, 2 sent for 5 years; 3 sent to the State Prison at Jackson for 6 months, 2 sent for 1 year, 4 sent for 2 years, 1 sent for 2½ years, 4 sent for 3 years, 1 sent for 3½ years, 1 sent for 4 years, 6 sent for 5 years; 4 sent to the State Prison at Marquette for 60 days, 2 sent for 90 days, 3 sent for 1 year, 1 sent for 1½ years, 2 sent for 2 years, 3 sent for 3 years.
Leasing building for purposes of prostitution and gambling	1	Dismissed.
Leaving dead animals unburied	4	Three convicted; 1 dismissed; 3 fined as follows: 1 fined $5; 2 fined $10.
Lewd and lascivious cohabitation	27	Ten convicted; 1 acquitted; 12 dismissed; 4 pending; 2 sentence suspended; 8 sentenced as follows: 2 sent to the county jail for 3 months, 1 sent for 6 months, 2 sent for 1 year; 1 sent to the State House of Correction at Ionia for 3 months; 1 sent to the State Prison at Marquette for 1 year; 1 sent to the Detroit House of Correction for 9 months.
Maintaining lottery	7	Two convicted; 2 acquitted; 1 dismissed; 2 pending; 2 fined as follows: 1 fined $15; 1 fined $219.
Maintaining nuisance	7	Four convicted; 2 dismissed; 1 pending; 1 abated; on 2 sentence suspended; 2 fined $5.
Malicious injury to property	227	Ninety convicted; 60 acquitted; 56 dismissed; 1 escape; on 13 sentence suspended; 77 sentenced as follows: 3 fined costs; 2 fined $1; 6 fined $2; 20 fined $5; 10 fined $10; 2 fined $15; 8 fined $20; 1 fined $25; 1 fined $100; 9 sent to the county jail for 10 days, 1 sent for 20 days, 5 sent for 30 days; 1 sent to the Reform School; 1 sent to the Detroit House of Correction for 60 days, 1 sent for 75 days, 3 sent for 90 days; 1 sent to the State House of Correction for 90 days, 1 sent for 1 year.
Malicious killing of animal	4	One convicted; 1 acquitted; 1 dismissed; 1 pending; 1 sent to the State Prison at Jackson for 3 years.
Malicious mischief	10	Nine convicted; 1 acquitted; on 1 sentence suspended; 8 sentenced as follows: 6 fined $2; 1 fined $5; 1 fined $6.
Malicious threats	60	Thirty convicted; 14 acquitted; 9 dismissed; 7 pending; 30 sentenced as follows: 19 gave bonds to keep the peace; 1 fined $1; 7 fined $10; 1 fined $15; 1 fined $50; 1 sent to the Kalamazoo Asylum.
Manslaughter	31	Five convicted; 6 acquitted; 1 dismissed; 19 pending; 1 suspended sentence; 4 sentenced as follows: 1 sent to the Reform School; 1 sent to the State House of Correction for 1½ years; 1 sent to the State Prison at Jackson for 1 year, 1 sent for 15 years.
Mayhem	8	Two acquitted; 2 dismissed; 4 pending.
Misdemeanor	2	Two convicted; on 1 sentence suspended, and 1 fined $5.
Murder	53	Fifteen convicted; 6 acquitted; 8 dismissed; 24 pending; 15 sentenced as follows: 1 sent to the State House of Correction for 3 years, 1 sent for 5 years, 1 sent for 15 years; 2 sent to the State Prison at Marquette for 25 years, 1 sent for life; 1 sent to the State Prison at Jackson for 8 years, 2 sent for 15 years, 6 sent for life.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
Neglecting to advertise found property	1	Convicted and fined $8.
Neglecting to cut Canada thistles	2	One convicted; 1 dismissed; 1 fined $10.
Obstructing railroad track	3	One convicted; 1 acquitted; 1 dismissed; 1 sentenced to State House of Correction for 3½ years.
Peddling without license	2	Two convicted; 1 fined $10; 1 fined $50.
Perjury	9	One convicted; 4 dismissed; 1 escaped; 3 pending; on 1 sentence suspended.
Personating another	3	Dismissed.
Personating an officer	4	One convicted; 2 dismissed; 1 pending; 1 sent to the county jail for 30 days.
Pointing fire-arms at another	7	Four convicted; 2 dismissed; 1 pending; 4 sentenced as follows: 1 fined $10; 1 fined $15; 1 fined $50; 1 sent to the county jail for 10 days.
Poisoning well	2	One convicted; 1 pending; 1 sent to State Prison at Jackson for 8 years.
Possession of burglar's tools with intent to commit	3	Three pending.
Rape	66	Fifteen convicted: 4 acquitted; 27 dismissed; 20 pending; 15 sentenced as follows: 1 sent to the Detroit House of Correction for 90 days; 1 sent for 6 months; 1 sent to State House of Correction, sentence indeterminate, 1 sent for 2½ years, 1 sent for 7 years; 1 sent to the State Prison at Jackson for 1 year, 1 sent for 3 years, 1 sent for 5 years, 1 sent for 7 years, 1 sent for 10 years, 1 sent for 15 years, 1 sent for 20 years, 1 sent for 21 years, 1 sent for 30 years, 1 sent for life.
Receiving stolen property	65	Twelve convicted; 10 acquitted; 36 dismissed; 7 pending, 1 sentence suspended; 11 sentenced as follows: 1 fined $20; 1 fined $50; 1 fined $100; 1 sent to county jail for 15 days; 2 sent for 1 year; 1 sent to State Prison at Marquette for 2 years; 2 sent to the State Prison at Jackson for 6 months; 2 sent for 1½ years.
Removing danger signal from railroad	1	Convicted and fined $50.
Resisting an officer	38	Eleven convicted; 12 acquitted; 7 dismissed; 3 pending; 1 forfeited bond; 10 are sentenced as follows: 1 fined $7; 1 fined $25; 1 fined $50; 1 fined $100; 2 sent to the county jail for 60 days; 1 sent to the State House of Correction for 6 months; 1 sent for 9 months; 1 sent for 1 year; 1 sent to the State Prison at Marquette for 1½ years.
Riot	32	Ten convicted; 8 acquitted; 19 dismissed; 10 fined $5.
Robbery	84	Twelve convicted; 6 acquitted; 5 dismissed; 11 pending; 12 sentenced as follows: 1 sent to the county jail for 30 days; 1 sent for 60 days; 1 sent for 90 days; 1 sent to the State House of Correction for 3 years; 5 sent to the State Prison at Marquette on indeterminate sentence; 2 sent for 5 years; 1 sent to State Prison at Jackson for 8 years.
Search warrant	17	One dismissed; in 8 the goods are found; in 8 the goods not found.
Seduction	18	Three convicted; 1 acquitted; 4 dismissed; 9 pending; 7 settled; 3 sentenced as follows: 1 sent to the State House of Correction for 6 months; 1 sent for 1½ years; 1 sent to the State Prison at Jackson for 4 years.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
Slander	188	Ninety-eight convicted; 41 acquitted; 41 dismissed; 2 pending; 1 settled; on 5 sentence suspended; 93 sentenced as follows: 6 fined costs; 8 fined $1; 1 fined $2; 1 fined $3; 1 fined $4; 38 fined $5; 1 fined $7; 7 fined $10; 2 fined $15; 2 fined $20; 4 fined $25; 1 fined $40; 1 fined $100; 1 sent to the county jail for 15 days; 1 sent for 20 days; 9 sent for 40 days; 7 sent for 60 days; 1 sent for 90 days; 1 sent to the Detroit House of Correction for 60 days.
Sodomy	1	Escaped.
Spectator at dog-fight	1	Acquitted.
Stealing ride on freight train	8	Eight convicted; sentenced as follows: 2 fined $5; 3 fined $10; 3 sent to the county jail for 60 days.
Surety to keep the peace	59	Thirty-four convicted; 9 acquitted; 14 dismissed; 2 pending; 39 gave bonds; on 4 sentence suspended; 7 sent to county jail.
Throwing explosive substances	2	One dismissed; 1 pending.
Throwing stones at passenger coach	12	Six convicted; 3 acquitted; 1 dismissed; 2 pending; on 2 sentence suspended; 4 sentenced as follows: 1 fined $150; 2 sent to the county jail for 10 days; 1 sent for 20 days.
Truancy	167	One hundred and twenty-nine were convicted; 9 acquitted; 15 dismissed; 1 pending; 13 remanded to parents; 22 sentence suspended; 1 sent to Coldwater School; 75 were sent to the Reform School; 31 were sent to the State Industrial School for Girls.
Unhitching and driving away horse without consent of owner	10	Eight convicted; 2 acquitted; on 1 sentence suspended; 7 sentenced as follows: 2 fined $5; 1 fined $25; 1 sent to the county jail for 30 days; 2 sent to the Reform School; 1 sent to the Industrial Home.
Unlawful practice of medicine	3	Three convicted; 2 sentence suspended; 1 fined $47.
Using false weights	1	Dismissed.
Violation of game law	50	
Classified as follows:		
(*a*) Killing deer out of season	1	Convicted and fined $50.
(*b*) Killing fish	23	Thirteen convicted; 5 acquitted; 4 dismissed; 1 pending; 13 sentenced as follows: 7 fined $5; 1 fined $25; 1 sent to the Detroit House of Correction for 70 days; 1 sent to the county jail for 10 days; 1 sent for 20 days; 2 sent for 30 days.
(*c*) Unclassified	35	Eighteen convicted; 8 acquitted; 8 dismissed; 1 pending; 18 fined as follows: 9 fined $5; 6 fined $10; 1 fined $25; 2 fined $30.
Violation of health law	3	Two convicted; 1 dismissed; 2 fined $3.
Violation of insurance law	7	Three convicted; 1 dismissed; 3 pending; 2 suspended sentence; 1 fined $20.
Violation of liquor law	1,209	
Classified as follows:		
(*a*) Unclassified	390	One hundred and ninety-eight convicted; 21 acquitted; 94 dismissed; 1 appeal; 76 pending; 3 forfeited bail; on 2 sentence suspended; 44 paid tax; 150 sentenced as follows: 4 fined costs; 3 fined $5; 4 fined $10; 7 fined $15; 13 fined $20; 24 fined $25; 8 fined $30; 6 fined $35; 12 fined $40; 4 fined $45; 23 fined $50; 3 fined $55; 5 fined $60; 6 fined $75; 8 fined $80; 1 fined $90; 6 fined $100; 6 fined $120; 1 fined $200; 1 sent to the county jail for 15 days; 4 sent for 90 days; 1 sent to Detroit House of Correction for 70 days.
(*b*) Bar obstructions	5	One convicted; 2 dismissed; 2 pending; 1 fined $10.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
(*c*) Keeping saloon open on holiday	19	Five convicted; 2 acquitted; 4 dismissed; 8 pending; 5 sentenced as follows: 2 fined $25; 1 fined $30; 1 fined $60; 1 fined $75.
(*d*) Keeping saloon open on election day	8	One convicted; 3 acquitted; 1 dismissed; 3 pending: 1 suspended sentence.
(*e*) Keeping saloon open on Sunday	113	Twenty-one convicted; 21 acquitted, 25 dismissed; 46 pending: 21 sentenced as follows: 4 fined $25; 1 fined $30; 9 fined $40; 2 fined $50; 1 fined $60; 3 fined $75; 1 fined $100.
(*f*) Keeping saloon open after hours	47	Fifteen convicted; 10 acquitted; 11 dismissed; 11 pending: 1 suspended sentence; 14 sentenced as follows: 2 fined $25; 10 fined $50; 1 fined $60; 1 fined $75.
(*g*) Selling to minor	19	Eight convicted; 5 dismissed; 6 pending; 1 sentence suspended; 7 fined as follows: 2 fined $10; 1 fined $25; 1 fined $50; 1 fined $75; 1 fined $100; 1 sent to the county jail for 10 days.
(*h*) Selling without paying tax	554	One hundred and twenty-eight convicted; 44 acquitted; 20 dismissed; 356 pending; sentence suspended, having paid tax, 52; 1 forfeited bail; 75 sentenced as follows: 4 fined costs; 1 fined $10; 1 fined $25; 1 fined $40; 1 fined $60; 1 fined $75; 65 fined $100; 1 fined $200.
(*i*) Selling to common drunkard	9	Two convicted; 5 dismissed; 2 pending; 1 sentence suspended; 1 fined $25.
(*j*) Selling without license	39	Seventeen convicted; 1 acquitted, 5 dismissed; 16 pending; 1 forfeited bail; 9 paid license; 7 sentenced as follows: 2 fined $15; 4 fined $25; 1 fined $50.
(*k*) Unlawful sales by druggists	6	One convicted; 5 dismissed; 1 fined $25.
Violation of pharmacy law	7	Seven convicted; sentenced as follows: 3 fined $10; 2 fined $15; 1 fined $20; 1 sent to the county jail for 10 days.
Willful cutting and removing of timber	2	One convicted; 1 acquitted; 1 suspended sentence.
Willful trespass	54	Twenty-three convicted; 21 acquitted; 10 dismissed; 2 suspended sentence; 21 sentenced as follows: 1 fined $1; 3 fined $3; 9 fined $5; 3 fined $6; 1 fined $10; 1 fined $12; 1 fined $25; 1 fined $30; 1 sent to the county jail for 60 days.

SCHEDULE I.

County.	Prosecuting Attorney.	Postoffice.	No. of Prosecutions.
Alcona	Mortimer D. Snow	Harrisville	9
Alger	Henry B. Freeman	Au Train	7
Allegan	Hannibal Hart	Allegan	156
Alpena	James McNamara	Alpena	125
Antrim	Roswell Leavit	Bellaire	30
Arenac	Farin C. Cummings	Omer	11
Baraga	Philip R. McKernan	L'Anse	52
Barry	William O. Lowden	Hastings	102
Bay	Curtis E. Pierce	Bay City	1,317
Benzie	George G. Covell	Benzonia	4
Berrien	Alison C. Roe	Berrien Springs	605
Branch	Elmer E. Palmer	Coldwater	158
Calhoun	John E. Foley	Marshall	996
Cass	L. B. Desvoignes	Marcellus	136
Charlevoix	Milton M. Burnham	East Jordan	10
Cheboygan	Henry G. Dozer	Cheboygan	141
Chippewa	Lawrence F. Bedford	Sault Ste. Marie	161
Clare	William A. Burritt	Harrison	18
Clinton	Henry J. Patterson	St. Johns	27
Crawford	Orville J. Bell	Grayling	11
Delta	James H. Clancy	Escanaba	58
Eaton	Horace S. Maynard	Charlotte	752
Emmet	Benj. F. Halstead	Harbor Springs	16
Genesee	John M. Russell	Flint	190
Gladwin	Thomas G. Campbell	Gladwin	36
Gogebic	Charles M. Howell	Bessemer	208
Grand Traverse	William H. Unlor	Traverse City	57
Gratiot	James Clarke	Ithaca	46
Hillsdale	Spencer D. Bishop	Hillsdale	90
Houghton	Allen F. Rees	Houghton	305
Huron	Hiram L. Chipman	Bad Axe	16
Ingham	Arthur D. Prosser	Mason	532
Ionia	Frank D. M. Davis	Ionia	429
Iosco	Main J. Comine	Oscoda	34
Iron	C. T. Crandall	Crystal Falls	65
Isabella	Herbert A. Sanford	Mt. Pleasant	24
Isle Royal	*		
Jackson	James A. Parkinson	Jackson	504
Kalamazoo	Lawrence N. Burke	Kalamazoo	635
Kalkaska	Cassius M. Phelps	Kalkaska	36
Kent	William F. McKnight	Grand Rapids	1,024
Keweenaw	Charles D. Hanchette	Hancock	14
Lake	H. Wirt Newkirk	Luther	58
Lapeer	William W. Stickney	Lapeer	51
Leelanau	Alex. McKercher	Leland	33
Lenawee	Frederick B. Wood	Adrian	281
Livingston	Dennis Shields	Howell	103
Luce	Frank H. Peters	Newberry	24
Mackinac	Peter N. Packard	St. Ignace	78
Macomb	James G. Tucker	Mt. Clemens	74
Manistee	Thomas Smurthwaite	Manistee	132
Manitou	*		
Marquette	H. Olin Young	Ishpeming	489
Mason	Gilbert H. Blodgett	Ludington	108
Mecosta	Frank B. Davison	Big Rapids	51

* No prosecuting attorney.

SCHEDULE I.—*Continued.*

County.	Prosecuting Attorney.	Postoffice.	No. of Prosecutions.
Menominee	Fabian J. Trudell	Iron Mountain	229
Midland	Floyd L. Post	Midland	59
Missaukee	Francis O. Gaffney	Lake City	18
Monroe	Alonzo B. Bragdon	Monroe	42
Montcalm	Frank A. Miller	Stanton	42
Montmorency	James B. Beverly	Hillman	31
Muskegon	Willard J. Turner	Muskegon	325
Newaygo	Armond F. Tibbits	Newaygo	62
Oakland	George W. Smith	Pontiac	149
Oceana	Henry W. Harpster	Pentwater	23
Ogemaw	Nelson Sharpe	West Branch	93
Ontonagon	Norman W. Haire	Ontonagon	105
Osceola	Henry D. Merrithew	Marion	18
Oscoda	John J. McCarthy	Mio	21
Otsego	William A. Harrington	Gaylord	19
Ottawa	Peter J. Danhof	Grand Haven	242
Presque Isle	Philip A. Inglesby	Rogers City	23
Roscommon	Henry H. Woodruff	Roscommon	34
Saginaw	William R. Kendrick	Saginaw (E. S.)	376
Sanilac	Edward C. Babcock	Sanilac Center	29
Schoolcraft	William F. Riggs	Manistique	21
Shiawassee	Selden S. Miner	Corunna	31
St. Clair	Cyrus A. Hovey	Port Huron	435
St. Joseph	Hugh P. Stewart	Centreville	89
Tuscola	Timothy C. Quinn	Caro	38
Van Buren	Oliver A. Goss	Paw Paw	109
Washtenaw	Michael J. Lehman	Ann Arbor	350
Wayne	Samuel W. Burroughs	Detroit	1,787
Wexford	Clyde C. Chittenden	Cadillac	113
Total number of prosecutions			15,747

SCHEDULE J.

OPINIONS OF THE ATTORNEY GENERAL.

Justices of the Peace.—Oath of Office.

The office of Justice of the Peace, under the provisions of Sections 728 and 649 of Howell's Statutes, will became vacant upon the failure of the person elected to take and subscribe and file his oath of office and bond as required by Sections 767 and 768 of Howell's Statutes.

Lansing, Mich., July 12, 1890.

HON. FRANCIS B. EGAN, *Dep. Sec. of State, Lansing, Mich.:*

DEAR SIR—In reply to your inquiry as to whether or not the office of justice of the peace will become vacant upon failure of the person elected to take and subscribe and file his oath of office and bond as required by sections 767 and 768 of Howell's Annotated Statutes, permit me to say that in my opinion the office will become vacant upon such failure. Section 728 of Howell's Statutes provides that, "every township office, including the office of justice of the peace, shall become vacant upon the happening of either of the events specified in chapter 15, as creating a vacancy." The provisions of chapter 15 referred to in section 728 are contained in section 649 of Howell's Statutes, by the terms of which "every office shall become vacant on * * * his (the incumbent's) refusal or neglect to take his oath of office or to give or renew any official bond or to deposit such oath or bond in the manner and within the time prescribed by law." The general rule is that such statutes are directory and not mandatory, and that where an officer takes an office by election, the election invests him with the title to the office, and that the statute requiring him to file his bond and oath within a certain time operates as a defeasance, and not as a condition precedent, and that where the bond and oath are filed after the expiration of the time and accepted by the authorities, authorized to accept the bond and oath, his title to the office cannot thereafter be questioned. But our statute is peculiar and is not to be controlled, I think, by the general rule, the neglect or refusal to take the oath or to give or renew the bond or to deposit the oath or bond in the manner and within the time prescribed by law, being placed by statute upon the same basis as the other events in the statute upon which the office is to become vacant, viz., the death of the incumbent, his resignation, his removal from office, etc., events which "*ipso facto*" render the office vacant.

Very truly yours,
JAY P. LEE,
Assistant to Attorney General.

Practice.—Hearing.

Practice under the tax law of 1889 where the hearing has been continued beyond the date of sale fixed in the notice of the Auditor General.

Lansing, Mich., July 12, 1890.

HON. H. R. PRATT, *Dep. Aud. Gen'l, Lansing, Mich.:*

DEAR SIR—I have had under consideration the letter of Mr. Watts S. Humphrey of Cheboygan, in relation to the practice under the tax law in cases where the hearing has been continued beyond the date of sale fixed in the notice of the Auditor General, and have arrived at the following conclusions:

1st. The day of sale will be such as may be fixed by the Auditor General, and the sale will take place after a publication of notice of at least four weeks as provided in section 62.

2d. I am inclined to believe that under the law, interest might be decreed in terms to the day of the sale, but as there is some doubt about it the safer and better way is to compute interest to the time of the decree.

3d and 4th. The form of the decree is to be such as may be determined by the court, and I think the decree may follow the form prescribed in section 57 down to the clause following the clause: "It is ordered, adjudged and decreed." After that the decree will follow, in my judgment, the ordinary chancery decree conforming to the facts and case. I am of opinion that the land should be described, not as provided in section 57 (that is by reference to the record), but in terms of survey, and that the amount of taxes, interest and charges should be named in the decree. I think such is the reasonable construction of section 59.

5th. The original decree should remain in the office of the clerk, a certified copy being delivered by the clerk to the treasurer as provided in section 59.

6th. I find no provision for notice to the Auditor General that a decree has been made in such cases, but it would be proper for the clerk to notify the Auditor General, upon which notice he may obtain a copy of the decree or decrees which will give him the information necessary to proceed to advertise and sell.

Very truly yours,
JAY P. LEE,
Assistant to Attorney General.

Railroads.—Taxation.

Railroads with branches, which are run, not as proprietary lines, but as a part of the main line, should not be taxed separately, but as one line.

Lansing, Mich., Aug. 1, 1890.

HON. JOHN T. RICH, *Com'r of Railroads, Lansing, Mich.:*

DEAR SIR—In relation to the matter of taxation of the Flint & Pere Marquette Ry., and its branch formerly known as the Port Huron & Northwestern, submitted to me some days ago, permit me to say that under your statement of fact, viz., that the Flint & Pere Marquette operates and controls the branch line (Port Huron & Northwestern) not as a propri-

etary line, but as a part of its own and as belonging to the Flint & Pere Marquette Railway Company and as part of its property, I am of opinion that the Port Huron & Northwestern branch should not be taxed separately but as a part of the Flint & Pere Marquette line.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Right of Way.—Turning Stock Upon.

Private individuals have no right to turn stock upon the right of way of a railroad company.

Lansing, Mich., Aug. 8, 1890.

HON. JOHN T. RICH, *Com'r of Railroads, Lansing, Mich.:*

DEAR SIR—In reply to your communication of the 5th inst. in relation to the liability of J. C. Newhouse for turning stock upon the right of way of the C. & W. M. Ry., permit me to say that I have examined the statutory provision referred to in your letter with considerable care, and that while I think there is considerable doubt as to whether or not the provision referred to is covered by the title of the act, which is as follows: "An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all railroad and other corporations owning or operating any railroad in this State," still the public interest is of such importance and the danger to the public, by reason of such conduct, is so great, that I think, if Mr. Newhouse has been fully informed of the provisions of the statute, a complaint ought to be made against him, because if the act in this regard be unconstitutional it is well that it should be passed upon by the court, that the Legislature may, at the earliest possible moment, pass a law which will protect the public.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Organizations.—Incorporation of.

Certain organizations cannot be legally incorporated under act No. 70 of the laws of 1887.

Lansing, Mich., Aug. 13, 1890.

HON. GILBERT R. OSMUN, *Sec. of State, Lansing, Mich.:*

DEAR SIR—In reply to your inquiry of the 12th inst. as to the articles of association of the Ludington Park Association, of Ludington, Mich., will say that in my opinion an association organized for the purposes

expressed in the second article in the articles of association submitted, cannot legally be incorporated under act No. 70 of the public acts of 1887.

Very respectfully yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Prosecuting Attorneys.—Issuing Warrants.

A prosecuting attorney is justified in refusing to issue a warrant, when under the circumstances, a conviction would be practically impossible.

Lansing, Mich., Aug. 15, 1890.

HON. CYRUS G. LUCE, *Gov. State of Michigan, Lansing, Mich.:*

MY DEAR SIR—I have examined carefully the petition of Mary H. Cross for the removal of Wm. E. Ware, prosecuting attorney of Branch county, from office, and will say that in my opinion the petition sets up no breach of duty of the prosecuting attorney, and no investigation should be made upon such a petition. If a complaint had been made, and the prosecutor, under the facts set up in the petition as to the offense charged to have been committed, had refused to prosecute, it is probable that his conduct would be entirely proper, as a conviction under such circumstances would be practically impossible, and the expense of the trial unwarranted.

Very respectfully yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Truancy.—Arrest of Juveniles.—Examination of Testimony.

Under act 108 of the public acts of 1885, as amended by act 218 of the public acts of 1889, a child must be arrested at the time the offense is committed, and not afterwards, as the purpose of the act is to prevent truancy, and the compulsory education of the child.

Under sections 2 and 3 of act 222 of the laws of 1887, the Circuit Judge is not required to examine the proceedings and testimony.

Lansing, Mich., Aug. 15, 1890.

HON. C. A. GOWER, *Supt. State Reform School, Lansing, Mich.:*

DEAR SIR—In reply to your inquiry of the 6th inst. concerning the construction of act No. 108 of the public acts of 1885, as amended by act No. 218 of the public acts of 1889, also act No. 222 of the public acts of 1887, will say that in my opinion the child can only be arrested at the time the offense is committed, that is to say, no arrest should be made for acts committed some time in the past, the purpose of the act being the prevention of truancy and the compulsory education of the child, and the object to be obtained by the enforcement of the statute being directly the benefit of the child, and not restraint. Any other construction placed upon this statute makes it punitory and not remedial. In regard to the

construction of sections 2 and 3 of act No. 222 of the public acts of 1887, I am of opinion that the Circuit or Probate Judge is not required to examine the proceedings and testimony. Section three has reference, I think, to the proceedings upon the trial before the justice. I am of opinion, also, that no approval, by the Circuit or Probate Judge, is necessary under act No. 218 of the public acts of 1889.

Very truly yours,

B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Department of State.—Certain Rules in.

Under section 5345 of Howell's Statutes, the rule established by the Department of State requiring that certificates of assignment in certain cases should comply with the statutory provision relative to deeds executed in other states or territories is a reasonable one, and should be complied with.

Lansing, Mich., Aug. 20, 1890.

HON. FRANCIS B. EGAN, *Dep. Sec. of State, Lansing, Mich.:*

DEAR SIR—I have examined the matter submitted to me by yourself and Hon. O. M. Barnes, in relation to the sufficiency of certificates of Cyrus W. Neal, attached to the acknowledgment of Rosetta M. Brown and Mary E. Brown, taken before Wm. H. Irvine in the state of Indiana, upon the assignment of State building land certificate No. 14,647, and will say that, in view of section 5345 of Howell's Statutes, in my opinion the rule established by the department, requiring the certificate to comply with the statutory provision in relation to deeds executed in other states or territories, is a reasonable one, and that where such certificate can be obtained it ought to be required.

Very truly yours,

B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Articles of Association.—Filing.—Capital Stock.

The Secretary of State is not authorized to allow the filing of articles of association of companies organized under act 35 of the laws of 1867, as amended, unless capital stock has been subscribed to the amount of $25,000.

Lansing, Mich., Sept. 5, 1890.

HON. GILBERT R. OSMUN, *Sec. of State, Lansing, Mich.:*

DEAR SIR—I have just received your letter of the 4th inst., asking for a construction of sections 4 and 5 of act No. 35 of the public acts of 1867, being sections 3539 and 3540 of Howell's Statutes, and will say that in my opinion the Secretary of State is not authorized to allow the filing of the articles of association of a company formed under the act, unless capital

stock to the amount of $25,000.00 has been subscribed as required by the proviso of section 4. It was manifestly the intention of the Legislature, by the addition of the proviso in 1869, to require a capital stock of, at least, $25,000.00, and I think it must be held that section 5, in so far as it conflicts with the proviso of section 4, was amended by implication.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Sufficiency of Affidavit.—Prosecuting Attorney.—Warrants.

An affidavit is not sufficient to authorize an investigation against a prosecuting attorney for refusing to issue a warrant, when it names no one for whom a warrant was requested, or fails to show that an offense had been committed.

Lansing, Mich., Sept. 23, 1890.

HON. CYRUS G. LUCE, *Governor, Lansing, Mich.:*

DEAR SIR—I have had under consideration the letter of Mr. F. L. Lord of Coldwater and the accompanying charges against Wm. E. Ware, prosecuting attorney of Branch county, submitted to me for an opinion as to the sufficiency of the charges and the propriety of an investigation. Mr. Ware is charged with a willful neglect of duty in refusing to authorize the issuing of a warrant. The affidavits name no one against whom a warrant was requested nor do they show that any offense has been committed by any one. The affidavits, upon which the Prosecuting Attorney reached his decision, show, if true, an arrangement between Clare and Hunt to deceive Messrs. Lord and Grosse as to the soundness of a horse, but the affidavits do not show that either Lord or Grosse was deceived.

The charges not only lack entirely the element of certainty required by the decisions of our Court in such cases, but they show that the decision of the prosecutor was the only proper one for him to make upon the facts submitted.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Articles of Association.—Filing of.

"Michigan Auxiliary Fire Alarm Company's" articles of association not entitled to filing under the manufacturing law of this State.

Lansing, Oct. 6, 1890.

HON. GILBERT R. OSMUN, *Sec'y of State, Lansing, Mich.:*

DEAR SIR—I have before me your letter asking whether or not the articles of association of the "Michigan Auxiliary Fire Alarm Company" are entitled to filing under the manufacturing law of this State.

The purposes of the corporation as set out in article two, are as follows:

To acquire the right to manufacture, sell, introduce and operate the Gamewell Fire Alarm under patents owned by the Gamewell Auxiliary Fire Alarm Company in and throughout the State of Michigan, and to engage in the business of manufacturing, buying and selling the Gamewell Auxiliary Fire Alarm and introducing the Gamewell Auxiliary Fire Alarm system throughout the State of Michigan, and also to engage in the manufacturing of buying and selling and introducing throughout the State of Michigan, fire alarm apparatus of all kinds.

After consideration of the statute and the purposes above enumerated, I am satisfied that it is not competent for a corporation organized under the manufacturing law of this State to engage in the operation of the fire alarm, which this company purposes to manufacture. That the company can manufacture and sell fire alarm, and put it in ready to be operated, I have no question; but I am satisfied, as above stated, that the operation of the alarm after once put in, is beyond the scope of the statute, and that therefore, the articles ought to be rejected.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Highway Commissioner.—Civil Liability.—Prosecuting Attorney.

Where a highway commissioner has awarded certain persons road work to be done under contract, there being lower bids for the same improvements, he might render himself liable on his bond, but not to a criminal prosecution, and a prosecuting attorney properly refuses to take any action in the matter.

Lansing, Oct. 7, 1890.

HON. CYRUS G. LUCE, *Governor, Lansing, Mich.:*

DEAR SIR—I have had under consideration your reference of Oct. 2d, comprising a letter of T. P. Caukins, letters of Allen F. Rees, prosecuting attorney of Houghton county, and affidavits of Duncan McKinnon, Grant C. Birmingham and Wm. Angood in relation to the neglect of duty of the prosecuting attorney of Houghton county in refusing to take action, where the township board of Duncan township has illegally paid for certain services, and in refusing also to take action on behalf of the township, where the highway commissioner of said township has awarded to certain persons road work to be done under contract, where there were lower bids for the same improvements.

After a consideration of the facts set forth in the papers handed me, I am of the opinion that the position of the prosecuting attorney is correct, and that no official duty devolves upon him to take action in the premises. I am not able to find that the act of the commissioner complained of, is one which subjects him to any criminal prosecution, though he would doubtless be liable upon his bond for not faithfully performing the duties of his office, if the facts stated in the affidavit are true.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Policemen.—Collection of Charges.

A private individual or corporation cannot furnish a policeman to watch property, and then collect the same from the township, although the township might authorize the employment of such policeman.

Lansing, Mich., Oct. 7, 1890.

JOHN J. MCCARTHY, ESQ., *Prosecuting Attorney, Mio, Mich.:*

DEAR SIR—Your letter of September was received some days ago, but owing to the fact that the Attorney General was not here, and that I wished to confer with him before answering it, the answer has been delayed until now.

After a careful consideration of the question, and an examination of the case of Peninsular Iron Co. vs. Crystal Falls, 60 Mich., 512, we are of the opinion that the company is not entitled to compensation for money paid to the policemen. We think it likely that if the township saw fit to furnish a policeman, such action would be sustained by the Supreme Court, but we do not think that a private individual or the company could furnish a policeman, and then collect from the board or township, the pay, whatever amount they saw fit to pay for such services.

Very truly yours,
JAY P. LEE,
Assistant to Attorney General.

Booths.—Construction of.

Under act No. 263, public acts of 1889, the construction of booths in townships where the number of voters is less than one hundred is discretionary with the township board, and cannot be demanded in case the officers decide not to require them.

Lansing, Mich., Oct. 13, 1890.

WM. D. TOTTEN, ESQ., *Prosecuting Attorney, Kalkaska, Mich.:*

DEAR SIR—Your letter of the 11th inst. asking a construction of section 20, act No. 263, public acts of 1889, is just received, and in reply will say that, in my opinion, the question of construction of booths in townships where the number of voters of is less than one hundred, is discretionary with the township board and officers whose duty it is to designate and prescribe the place of holding elections, and that booths cannot be demanded in case the officers decide not to require them.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant to Attorney General.

Railroad Depot.—Removal of.—Railroad Commissioner.

A railroad company may move its depot, provided the village or community is not deprived of the facilities afforded by the company, and the Railroad Commissioner has no power to compel said company to restore it within the village limits.

Lansing, Nov. 11, 1890.

HON. JOHN T. RICH, *Commissioner of Railroads, Lansing, Mich.:*

DEAR SIR—I have had under consideration the petition referred with

your communication of the 6th inst., in relation to the corporate duties of the Toledo, Ann Arbor & North Michigan Railroad Company toward the village of St. Louis.

The petition sets up that the company constructed its line to the village of St. Louis, and erected its passenger depot within the village; that the construction of the road to St. Louis was brought about by certain aid notes from the citizens along the line, which notes have been duly paid. After the construction of the passenger depot within the village the company moved its passenger depot to a point some half a mile outside the village limits.

The communication refers to section 46 of act No. 174 of the laws of 1883 and act No. 275 of the laws of 1887 as defining the powers of the Commissioner in the premises. These sections are sections 84, 280 and 281 of the compilation made by you in 1889. From an examination of these sections I am unable to find that the Commissioner has any power to compel the company to restore its passenger depot within the village limits. The only authority given to the Commissioner by these sections is under section 281, and the authority given is to institute proceedings to recover a penalty, provided the facts are such as to warrant proceedings upon the part of the Commissioner. I am not satisfied from an examination of the facts contained in the communication that they are such as would authorize the Commissioner to act in the matter. I think under certain circumstances it would be perfectly proper for a railroad company to move its depot from one place to another, provided the city, village or community is not deprived of the facilities afforded by the company. I do not think that the statute was designed to prevent a company from making such subsequent arrangements as would operate to its convenience, if the arrangements so made did not interfere essentially with the convenience of the community, and, as intimated above, I cannot say from the facts submitted to you that the action of the company in this case is such an interference.

Yours very truly,

B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Mistake in Issuing Patent.—Correction.

Upon a proper showing that a mistake was made in the name of an applicant in issuing a patent, another patent may issue to correct the mistake.

Lansing, Nov. 11, 1890.

HON. FRANCIS B. EGAN, *Deputy Secretary of State, Lansing, Mich.:*

DEAR SIR—I have had under consideration your letter of Oct. 30th, which, however, was delivered at this office Nov. 8th, asking whether or not a patent should issue upon the corrected certificate No. 23392 to correct a patent previously issued to one E. Woodford by mistake, instead of T. Woodford, and will say that in my opinion the patent may be issued. The showing seems to be clearly made that there was a mistake in the name of the applicant for the first certificate and patent, and I can see no reason why, upon a sufficient showing of error, the mistake may not be corrected by the departments.

It would not be improper to insert in the patent a statement of the fact that the patent is issued to correct a patent previously issued, mentioning the date of the issuing of the former patent.

I think it would be proper to issue the patent to Mr. Sparrow, the applicant, he having acquired all the rights and interest of the party to whom the patent should have been issued in the first instance.

Very truly yours,

B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant.

Proceedings to Recover Penalties.

This regards the authority of the Attorney General or Prosecuting Attorney of Gratiot county to institute proceedings in the name of the People for the recovery of certain penalties against the Toledo, Ann Arbor & North Michigan Railway Company.

Lansing, Nov. 14, 1890.

HON. JOHN T. RICH, *Commissioner of Railroads, Lansing, Mich.:*

DEAR SIR—I have had under consideration the petition, referred with your communication of the 6th inst, in relation to the corporate duties of the Toledo, Ann Arbor & North Michigan Railroad Company toward the village of St. Louis, in connection with your oral statements of the facts in regard to the local aid furnished by the property owners in the village of St. Louis to the effect that the local aid was subscribed with the understanding that the passenger depot was to be at the point where it was first located within the limits of the village of St. Louis.

If the facts and circumstances are as you seem to think them to be by your oral statements you have the authority, in my opinion, under section 281 of the compilation of the general railroad laws, to call upon the Attorney General or the Prosecuting Attorney of Gratiot county to institute proceedings in the name of the people of the State of Michigan for the recovery of the penalty specified in section 46 of the same compilation, and to compel the restoration of the track of the company so abandoned, and the reopening for business of the station where it was located in the first instance.

Yours very truly,
B. W. HUSTON,
Attorney General.

Board of State Canvassers.—Canvassing of Votes by.

This regards the canvassing of votes for Allen C. Adsit by the Board of State Canvassers. The question was decided by the Supreme Court in Adsit vs. Board of State Canvassers, 48 N. W. R. 31.

Lansing, Nov. 26, 1890.

HON. GILBERT R. OSMUN, *Secretary of State, Lansing, Mich.:*

MY DEAR SIR—I have had under consideration the question submitted to me by yourself as to whether the Board of State Canvassers should can-

vass the votes cast for Allen C. Adsit for Judge of the Circuit Court for the 17th Judicial Circuit at the last general election, and will say that in my opinion the board ought to refuse to canvass the votes for two reasons:

First, Because no notice of any such election was given by the Secretary of State;

Second, Because there was no law authorizing such an election.

I suggest to you that the record of the vote as returned to the Secretary of State should be filed in the office that it may be had in case of litigation.

Very truly yours,
B. W. HUSTON,
Attorney General.
Per JAY P. LEE,
Assistant to Attorney General.

Insurance policies.—Contract of insurance.—Enforcement of.

Certain provisions in the policies issued by the American Casualty Insurance and Security Company, of Baltimore, Md., unauthorized by the charter, and the contract of insurance could not be enforced in the courts of this State, for the reason that the employer, except in cases where he was *liable* for the injury of the employé, would have no insurable interest.

Lansing, Dec. 11, 1890.

HON. HENRY S. RAYMOND, *Commissioner of Insurance, Lansing, Mich.:*

DEAR SIR—I have had under consideration your letter of the 5th inst., asking for an opinion as to the legality of the second and third items of the contract of insurance of the American Casualty Insurance and Security Company, of Baltimore, Maryland, and whether the terms of the contract can be enforced in the courts in this State.

I have examined the copy of the charter of the company on file in your office and the statute, Act No. 237 of the Public Acts of 1881 as amended by the act of 1887, by the provisions of which the company is authorized to do do business in this State, and am satisfied that the provisions of the policy referred to are not authorized by the charter of the company. The only provision of the charter of the company authorizing insurance of this nature is as follows: "To make insurance against the *liability* of employers or others for injuries to their employes or to others." This does not authorize insurance against claims against the employer regardless of the nature of the accident whether or not it was of such nature that the employer would be *liable* for the injury. I think items four and five are open to the same objection.

Aside from the lack of authority contained in the charter of the company to make such insurance, I believe that such contract of insurance could not be enforced in the courts in this State for the reason that the employer, except in cases where he was *liable* for the injury to the employé, would have no insurable interest. The tendency of such insurance would be to make the employer careless of the lives and safety of his employés, and would be manifestly against public policy.

Yours very truly,
JAY P. LEE,
Assistant to Attorney General.

Township Officers Guide.—Compilation of.

The compilation of the "Township Officers Guide" does not fall within the duties of the Secretary of State, and he had the power to contract for the work, and the State would be liable for the payment of the same when performed.

Lansing, Dec. 30, 1890.

HON. FRANCIS B. EGAN, *Dep. Sec. of State, Lansing, Mich.:*

DEAR SIR—I do not think the compilation of the "Township Officers Guide," provided for by act No. 197 of the public acts of 1889, falls within the usual and ordinary duties of the Secretary of State. It does not seem possible that the Legislature expected him to do the work personally, neither is it reasonable to suppose any clerk in his office would be a suitable person to perform this work.

I am of the opinion that the Secretary of State had the power to contract for the work, and the State would be liable for the payment of the same when performed; and that a claim for a reasonable compensation ought to be allowed by the Board of State Auditors.

Very truly yours,
B. W. HUSTON,
Attorney General.

Selection of newspaper.—Revocation of selection.

The Auditor General has authority to revoke any selection that he or his predecessor may have made as to the paper that should publish the petition, notice of hearing, etc., in delinquent tax matters under the law of 1889.

Lansing, January 2, 1891.

HON. GEORGE W. STONE, *Auditor General:*

In reply to your question, "Has the Auditor General authority after he, or his predecessor, has selected a paper in which to publish a copy of petition, notice, etc. (as provided in section 54 of act No. 195, of Public Acts of 1889), and sent out copy and notice to such paper, to revoke such selection?" I have the honor to reply that I have carefully examined the provisions of the act, and am of the opinion that you possess the authority at any time, when you deem it expedient or for the interests of the State, to revoke any selection that you or your predecessor may have made as to the paper that should publish the petition, notice of hearing, etc., before the publication has commenced, *provided*, sufficient time shall elapse before the next term of the Circuit Court held in the county where said selection is revoked, to give four weeks notice of the hearing, after the order is changed, and prior to the first Monday of the following May.

The publication must be once in each week for four successive weeks, and the sale is to take place on the first Monday of May; hence, the notice of hearing must be for some term of the Court that occurs, or is in session, four weeks after the notice of hearing is given, and prior to the first Monday in May following.

In case there is no term of circuit court at which the notice could be given, after the selection was revoked, you understand to revoke the order would necessarily postpone the sale. Just what effect this might have, it is unnecessary for me at this time to determine.

You have all the powers to act in the premises that your predecessor

would have had, had he continued in office, and at least, within the limits above given. You have perfect authority to make such orders, and revoke such selections, as you may deem expedient, and for the interests of the State.

Yours very truly,
A. A. ELLIS,
Attorney General.

Public Records.—Inspection.

The Auditor General has a legel right to answer any questions relating to any public records in his office, even if the persons inquiring have no special interest therein.

Lansing, Jan. 7, 1891.

HON. GEORGE W. STONE, *Auditor General:*

DEAR SIR—In reply to your question as to what information you are justified in giving to persons making inquiries at your office concerning State business, I would reply: It was formerly held by our Supreme Court that the special interest the person had in the subject inquired about, governs his right to information, and that no person had a right, solely from curiosity, to inquire of a public officer concerning the contents of the records in his office.

In the case of Burton vs. Tuite, 44 N. W. 285, the Supreme Court clearly overrule the doctrine of former cases. Among other things, Judge Morse says: "I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to, and public inspection of, public records. They have an interest always in such records, and I know of no law, written or unwritten, that provides that, before an inspection or examination of a public record is made, the citizen who wishes to make it must show some special interest in such record. I have a right, if I see fit, to examine the title of my neighbor's property, whether or not I have any interest in it, or intend ever to have. I also have the right to examine any title I see fit, recorded in the public offices, for purpose of selling such information, if I desire. No one has ever disputed the right of a lawyer to enter the Register's office, and examine the title of his client to land as recorded, or the title of the opponent of his client, and to charge his client for the information so obtained. This is done for private gain as the part of the lawyer's daily business, and by means of which, with other labors, he earns his bread."

This decision was on a special statute concerning county records, but the court goes further and overrules the case of Webber vs. Townley, 43 Mich., as to the common law doctrine.

Based on the above opinion of the Supreme Court of this State, it is my opinion that a State officer would be justified in giving information concerning any public records in his possession.

Respectfully,
A. A. ELLIS,
Attorney General.

Erection of Fish Shutes.—Expense of.

Counties are not chargeable with the expense of the erection and maintenance of fish shutes or ladders, but are chargeable only with the expense incurred in *causing* the erection of such shutes or ladders. The supervisor has no authority to construct these shutes or ladders himself.

Lansing, Jan. 8, 1891.

JAS. A. PARKINSON, *Prosecuting Attorney, Jackson, Mich.:*

DEAR SIR—In reply to your question concerning the construction of act No. 117 of Session Laws of 1883, as to whether the county, under this amendment, would be chargeable with the expense of the erection and maintenance of fish shutes or ladders; I would say that I do not understand that section 7, as amended, contemplates any such change in the law. When this section, as amended, is read in connection with section 5 (section 2153 of Howell's Statutes), it is clear that the expense referred to in section 7 as amended, relates only to the expense incurred in *causing* the owners to erect these shutes or ladders.

Section 5 makes it the duty of the owners or occupants to "cause to be erected" and "all such shutes or fish ladders shall be maintained and kept in good repair by the owners or occupants."

Section 7 as amended does not give the supervisor any authority to construct the shutes or ladders himself. There are only two things he can do:

First, "Upon the approval of the board he shall cause to be constructed *by the owner* of said dam a fish shute or ladder as provided by the terms of the act;"

Second, He can prosecute in all cases where the law is not complied with. The law makes no provision for the supervisor to put the construction of these fish shutes into other hands, if the owner refuses or neglects to act, and expressly confines the right to prosecute for failure.

The phrase "the expense thereof," after the duty fixed of causing the owner to construct, I think refers to the expense incurred in performing that duty, and as "inspector of dams," and has no reference to the expense of the shute or ladder itself.

Respectfully,
A. A. ELLIS,
Attorney General.

Lieutenant Governor.—Vote in Case of Tie.

The Lieutenant Governor can vote, when presiding, in all cases where there is an equal division, on all questions excepting bills and joint resolutions.

Lansing, Jan. 15, 1891.

HON. JOHN STRONG, *Lieutenant Governor:*

DEAR SIR—Your favor, by the Secretary of the Senate, requesting an opinion concerning the meaning of section 14, article 5, constitution, as to whether the right of the Lieutenant Governor to vote in case of a tie, is confined to times when the Senate is in committee of the whole, or applies in other cases, is received.

Article 5, section 14, provides, "The Lieutenant Governor shall, by virtue of his office, be President of the Senate. In committee of the

whole he may debate all questions and when there is an equal division, he shall give the casting vote."

Article 4, section 19, provides, "No bill or joint resolution shall become a law without the concurrence of a majority of all the members elect to each house."

To allow the Lieutenant Governor to vote in case of a tie on the passage of a bill or joint resolution, would not get such a majority as is provided by the constitution, as the Lieutenant Governor is not one of the members elect provided for by this section.

Article 4, section 2, provides that "The Senate shall consist of thirty-two members." The Lieutenant Governor has only such right to vote as given by the constitution.

The question really is, does the section 14 of article 5 apply to all questions on which there is a tie, excepting those mentioned in section 19 of article 4? Or does it apply only to an equal division in committee of the whole?

Usually in committee of the whole, a member is in the chair, and for what good reason could the clause be placed in the constitution to apply only in committee of the whole? If this clause applies only to the committee of the whole, with a literal construction, the Lieutenant Governor could vote in committee of the whole, in case of tie, whether he was in the chair or not. The clause certainly does not mean that the Lieutenant Governor can vote in committee of the whole in case of a tie, whether he is in the chair or not; such a proceeding in parliamentary practice is without any precedent. If the framers of the constitution intended to limit the right to vote simply to the committee of the whole, and thus to limit the authority of the President of the Senate far beyond the usual limit of the powers of such officers, it seems reasonable to conclude that the framers of the constitution would have made a clear statement of their intention.

Taking all the provisions together that apply to this matter, it is my opinion that the Lieutenant Governor can vote, when presiding, in all cases where there is an equal division on all questions, excepting bills and joint resolutions.

Very respectfully,
A. A. ELLIS,
Attorney General.

Expenses of Legislative Committees.—Duty of Presiding Officers.

Legislative committees, appointed to visit State institutions, are entitled only to actual expenses in addition to their usual fees. If the expenses are to be paid without a vote, the presiding officer has a right, and it is his duty to ascertain the actual expenses of members of committees.

Lansing, Jan. 24, 1891.

HON. JOHN STRONG, *Lieutenant Governor*:

DEAR SIR—I have examined the law relative to the question submitted by you.

It is my opinion that members of legislative committees, appointed to visit State institutions, are entitled to receive, in addition to their usual fees, their "actual expenses incurred for travel." (Sec. 67, Howell's Stat-

utes.) This would include transportation and their hotel expenses actually paid.

If it cost a member nothing for transportation, and nothing for his hotel expenses, he would not be entitled legally to anything in addition to his usual fees as a legislator. If a man travels free and is entertained free, he has no "actual expenses incurred for travel," and is not entitled to any expense money.

If their expenses are to be paid without any vote of the Senate and simply on your certificate, (Sec. 66 and 67, Howell's Statutes), you have a right, and it is also your duty to ascertain what the actual expense is of each member of visiting committees from the Senate, incurred for travel, before you certify to such expense.

Yours respectfully,
A. A. ELLIS,
Attorney General.

Fees of Prosecuting Attorneys.—Mandamus Cases in Supreme Court.

Act No. 72 of the public acts of 1887 may apply to the questions involved in criminal cases removed to the Supreme Court by *mandamus*, and bills of prosecuting attorneys for services rendered in such cases may be allowed by the Board of State Auditors.

Lansing, Jan. 27, 1891.

To the Board of State Auditors:

GENTLEMEN—The bill of John E. Foley, prosecuting attorney of Calhoun county, has been referred to me by the clerk of your board for an official opinion as to whether or not the same is a legal claim against the State of Michigan.

The only question in this case is: Does act No. 72 of the public acts of 1887 apply when a criminal case, or the questions involved in a criminal case, are removed to the Supreme Court by *mandamus*.

Said act provides as follows: "That in all criminal proceedings removed to the Supreme Court, by appeal or otherwise, it shall be the duty of the prosecuting attorney of the county from whence any cause is so removed, to appear on behalf of the People therein, etc." The act further provides that the prosecuting attorney for such services shall have a "reasonable compensation, including his expense in travel," to be determined by the Board of State Auditors.

In the case in which Mr. Foley presents this bill, a criminal case was pending in the Circuit Court for Calhoun county. The defendant in that suit, by his attorney, made a motion to quash the information, which motion was denied by Judge Hooker. As the motion was denied, the defendant, by his attorney, came to the Supreme Court and asked said Court to grant a writ of *mandamus* to compel Judge Hooker to quash the information, or in other words, to grant defendant's motion. If the Court granted this writ the criminal case would be thrown out of court.

The proceeding by the Supreme Court, although in form against the Circuit Judge, is in fact a step in the criminal case, and the decision of the Supreme Court will either affirm a decision made by the Circuit Judge, or it will compel him to reverse it and discharge the respondent.

The Supreme Court is an appellate court, and has a right to bring before

it the proceedings of an inferior court by any appropriate writ. *Mandamus* is the appropriate remedy in a case like the one under consideration. If the defendant was entitled to his discharge, he was entitled to speedy relief.

Tawas, etc., R. R. vs. Iosco County Circuit Judge, 44 Mich., 471.

In the case of the People *ex rel.* Barrett vs. Bacon, 18 Mich., 247, the Supreme Court said: "When a *mandamus* issues to direct the action of a legal tribunal, proceeding in the course of justice, it is an exercise of supervisory judicial control, and is in the nature of an *appellate action.*" So in this case, the action of the Supreme Court in granting an order against the court, was to all intents an appeal of an order that went to the very foundation of the criminal case. It brought all there was in the criminal case before the Supreme Court.

The statute under consideration provides not only for "cases" but "proceedings" that come to the Supreme Court, not only by appeal, but by "appeal or otherwise."

I am clearly of the opinion that the Legislature intended by this act to give the Attorney General the assistance of the Prosecuting Attorney in all criminal proceedings, which are steps in criminal cases commenced in the several courts.

I cannot see any difference between the principles in this case and that decided by the Supreme Court in the case of George P. Hopkins vs. the Board of State Auditors. The case was decided in 1890. No opinion was filed.

In the above case the relator was Prosecuting Attorney of Kalamazoo county; one Henry Franklin had been convicted in the Kalamazoo Circuit Court, and sentenced to the State Prison at Jackson.

Afterwards Franklin sued out a writ of *habeas corpus* in the Supreme Court; the relator, George P. Hopkins, as Prosecuting Attorney for Kalamazoo county, appeared in the Supreme Court and assisted the Attorney General; afterwards Hopkins presented his bill under act No. 72 to the Board of State Auditors. They disallowed his bill, solely on the ground that it did not come within the provisions of that act; and Hopkins applied to the Supreme Court for a writ of *mandamus* against the Board, and the writ was granted by the Supreme Court against the Board of State Auditors.

It is very unusual for the Supreme Court to interfere with the Board of State Auditors, and it is at least fair to presume that the Court found that the relator had a clear legal right, and that it was the duty of the Board to audit the claim, or they certainly would not have granted the writ.

In my judgment it is clear that by the words, "by appeal or otherwise," the Legislature intended to include proceedings of this class, and that the account of John E. Foley should be audited by your honorable Board.

Yours very truly,

A. A. ELLIS,
Attorney General.

Judge of Probate.—Increase of Salary.

Under sections 9012 and 9013 of Howell's Statutes, the Judge of Probate is entitled to increased pay on and after June 2, 1890.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Jan. 29, 1891.

FLOYD L. POST, ESQ., *Prosecuting Attorney, Midland, Mich.:*

DEAR SIR—Your favor asking for my opinion as to the time when the Judge of Probate would be entitled to increased pay under sections 9012 and 9013 of Howell's Statutes, by reason of increase in the population, is received.

Section 9012 of Howell's Statutes provides, among other things, that "the amount of such salary to be paid to the Judge of Probate of the several counties shall be based upon and determined by the population of the respective counties as shown by each succeeding national or state census."

Section 9013 of Howell's Statutes gives the basis of computation. Chapter 319 of the U. S. Statutes of 1888–9, Sec. 1, page 760, provides "That a census of the population * * * shall be taken as of the date of June 1, 1890," and section 19 of the same chapter provides "That the enumeration required by this act shall commence on the first Monday of June, 1890, and be taken as of that date."

Under the U. S. Statutes above cited the population will be returned as Monday, June 2, 1890, and it is from that date that the Judge of Probate will be entitled to compute his compensation.

Inquiry at the Secretary of State's office today revealed the fact that no official count of your county has yet been furnished to the State. A letter was shown me from the Census Bureau to the Secretary of State, stating that "The final official count of Michigan by counties will be available in a short time, and as soon as these figures are compiled, I shall report the same." I call your attention to this so that you may not take any action on non-official papers.

Respectfully,
A. A. ELLIS,
Attorney General.

Liquor law.—Bond to protect public.—Domestic wine.—Restrictions on sale.

The object of the bond required by section 8, act No. 313 of the laws of 1887, is to protect the public against the unlawful sale of liquor, and to secure payment in case of injury or loss; and persons who raise grapes and manufacture them into wine and then sell to every one who will buy, should give bonds. Such persons would be guilty of a violation of the law if they sold to minors and to other persons named in the prohibited class in section 13.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Jan. 29, 1891.

ALEX. MCKERCHER, *Prosecuting Attorney, Leland, Mich.:*

DEAR SIR—Your favor, asking for my opinion on a legal proposition, is received. I cannot better state the question than repeat what you say in your letter, as follows: "We have in this county quite a number of peo-

ple who raise grapes on a large scale. When they are unable to sell to advantage, they manufacture them into wine, and then sell to every one who will buy. This practice causes drunkenness and disturbance; the people generally supposing that the liquor law authorizes the sale and manufacture of cider and wine from fruit grown in this State, because section 2, act 313, laws of 1887, exempts them from the payment of the tax."

The questions are these: "Does not this law require these people to give the usual bond, and are they not restricted by the act, and to what extent?"

Section 8 of act 313 of the public acts of 1887, provides among other things: "Every person engaged in the sale of any spirituous, malt, brewed, fermented or vinuous liquors, except druggists, shall, before commencing such business * * * * make, execute and deliver to the county treasurer * * * a bond, the sufficiency of which shall be determined by the township board of the township, the council * * * of the village or city in which such business is proposed to be carried on, to the people of the State of Michigan." Conditioned, "That he will not directly or indirectly, by himself, his clerk, agent or servant, at any time sell, furnish, give or deliver any spirituous, malt, brewed, fermented or vinous liquors * * * to a minor, nor to any adult person whatever, who is at the time intoxicated, nor any Indian, nor a person of Indian descent, nor to any person when forbidden in writing so to do * * * and that he will pay all damages, actual or exemplary, that may be adjudged to any person or persons for injuries inflicted on him or them, either in person or property, or means of support or otherwise by reason of his selling, furnishing, giving or delivering any such liquors."

The object of this bond is to protect the public against the unlawful sale of liquor, and to secure payment in case of injury or loss. The principal and sureties are both liable.

Prior to 1887, the liquor law providing for tax, and the law providing for bonds, was in two separate acts. The law of 1887 attempts to combine both of these features of the law. Section 2 divides the dealers in all kinds of liquors, including wine, in two classes, wholesale and retail. All persons who sell or offer for sale in quantities of more than three gallons, or more than one dozen quart bottles at one time, to any person or persons, are wholesale dealers; and retail dealers are those who sell by the drink, or in smaller quantities than those above given.

Two questions are submitted:

First, Does section 8 apply only to those who have started in the business as a business? It provides that, "before commencing such business," he shall give a bond.

It will be seen that section 8 of act No. 313 of the public acts of 1887, is almost an exact copy, so far as these provisions are concerned, of section 9 of act 259 of the public acts of 1881, and in the case of People vs. Kropp, 52 Mich. 582, the court held that "Selling a pint of liquor in a single instance without having given the bond required of liquor sellers is a violation of Howell's Statutes, Sec. 2270, whatever be the intent of the offender as to going into the business of liquor selling." This case would appear to be an adjudication of the point; but subsequently the court held in the case of Wildemarth vs. Cole, 77 Mich. 483, where it was sought to show that a sale of liquors was void, because made by the sheriff when no tax was paid or bond given, that "A sheriff, in making a sale

of intoxicating liquors under an execution, is not 'engaged in the business of selling intoxicating liquors' within either the letter or the spirit of the liquor law of this State."

These cases are not quite in harmony, as the latter puts it on the theory that he is "not in business within the letter or spirit of the law," and the former holds that if he sold, he was guilty, and it was immaterial whether he was in the "business" or not.

Under the statement of facts, the parties who sell wine to "everyone who will buy" come within both the spirit and letter of the law, and in my opinion are required to give bonds as is provided in section 8.

See also People vs. Foster, 64 Mich., 715.

Section 13 makes it unlawful to sell to minors, intoxicated persons, persons in the habit of getting intoxicated, and to Indians, and persons of Indian descent. And the intention clearly is to protect those persons from the hurtful influence of such beverages.

The liquor sold to a person of any of this class would injure such person just as much if furnished by a person who sold and furnished occasionally, as though furnished by one whose avowed business was the sale of intoxicating liquors; and would be just as clearly a violation of the spirit of the law.

I therefore conclude that any person who sells wine, as stated in the facts in this case, to any of the prohibited classes named in section 13, would be guilty of violating the law.

Respectfully,
A. A. ELLIS,
Attorney General.

Justices of the Peace.—Jurisdiction.—Order of Prosecuting Attorney.

Justices of the peace are not deprived of jurisdiction by issuing process in criminal cases before securing an order from the prosecuting attorney or taking security for costs.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Jan. 30, 1891.

H. A. SANFORD, *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR—Your favor received, asking whether, in my opinion, a conviction in justice court was good when no security for costs or order from prosecuting attorney was given as required by section 7135 a of Howell's Statutes in cases not excepted in the section, and whether defendant could be legally imprisoned in county jail.

In the case of People vs Griswold, 64 Mich. 723, the court say, "While an omission to secure an order from the prosecuting attorney before issuing process in criminal cases might subject the magistrate to censure, and possibly, in some cases, to pecuniary injury and financial embarrassment, *it was never intended to deprive the court of jurisdiction in any case;* and whether the complaining party has given to the people security for costs in the case is a subject *in which the respondent is not especially interested,* and, if the people are satisfied to prosecute without such security, there is no reason why he should complain.

It would seem as though the construction by the Supreme Court as above

cited, clearly holds that the justice had jurisdiction, and the papers and proceedings being otherwise regular, it follows certainly that the party convicted could be punished in any manner provided by law, and if the law provided for imprisonment in the county jail, defendant could be so punished.

Yours truly,
A. A. ELLIS,
Attorney General.

Election Ballots.—Tickets, how Printed.—General Elections.—Township Meetings.

The ticket for Supreme Court judges and regents must be printed under the supervision of the Secretary of State. A spring election at which a Justice of the Supreme Court is elected, is a general election. The constitution provides for a "township meeting" and a "general election."

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, February 4, 1891.

LAWSON C. HOLDEN, ESQ., *City Attorney of Saginaw:*

DEAR SIR—Your letter of January 26, asking me to advise you soon "whether the names of our candidates for Supreme Judges and regents must be on the same slip or ballot with the ward constables," is received.

Inasmuch as the same question has been asked by different township officers, as well as officers of the various cities of the State, in replying to you I desire my answer to cover the several townships in the State, as well as the wards in the several cities; and in this way let my answer to you be used as an answer to the various persons who are asking for my opinion concerning this matter.

The title of act No. 263 of the session laws of 1889 reads as follows: "An act to prescribe the manner of conducting, and to prevent fraud and deception at the general elections in this State."

Under the present law of the State of Michigan we have a biennial fall election which is denominated a general election. Section 137 of Howell's Statutes provides "that a general election shall be held in the several townships and wards of this State on the Tuesday succeeding the first Monday of November in the year 1852, and on the Tuesday succeeding the first Monday of November every second year thereafter, at which there shall be elected so many of the following officers as are to be chosen in such years respectively, that is to say, a Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor General, Attorney General, Superintendent of Public Instruction, Commissioner of State Land Office, members of the State board of education, electors of president and vice-president of the United States, representatives in congress, senators and representatives in the State Legislature and the following county officers, viz.: Judges of probate, sheriff, clerk, treasurer, register of deeds, prosecuting attorney and such other officers as may by law be required to be elected at such general election."

Section 252 of Howell's Statutes provides "that a general election shall be held in the several townships and wards of this State on the first Monday in April, in the year 1863, and on the first Monday in April in every second year thereafter, for the election of regents of the University, who

shall enter on the duties of their office on the first day of January next succeeding their election."

Section 6383 provides, "A general election shall be held in the several townships and wards of the State, on the first Monday in April, in the year 1857, and on the first Monday of April every second year thereafter, for the election of Judges or Justices of the Supreme Court."

It will be seen that the first section above cited, providing for a biennial fall election, not only makes it a general election, but expressly provides what officers shall be elected at such election.

Section 252 above quoted, provides for the first election in the year 1863 and every two years thereafter. Section 6383 provides for the first election on the first Monday in April, 1857, and on the first Monday of April every second year thereafter. These last two sections provide that a general election, in substance, for the election of regents and Judges of the Supreme Court, shall take place on and after the first Monday of April, 1863; and it will be observed that the two sections last above quoted not only provide for the general election every two years, but expressly provides what officers shall be elected at such general elections.

In the case of Westinghausen vs. the People, 44 Mich., 265, Judge Campbell enters into a learned discussion of what is understood by general election, and among other things says: "It will be seen from all this that under the constitution there was only one election which was ever referred to as a general election, and that the term was used as identical with the November election, which was previously annual, and thereby made biennial. That was the only election held simultaneously throughout all the State for officers to represent the whole State. At that election the Governor and all the State officers throughout all the State, and the senators and representatives in the State Legislature, except in the Upper Peninsula, were chosen. The only other elections referred to were the annual town meetings and the sexennial circuit elections for circuit judges and regents, in which the upper Upper Peninsula was separated from the rest of the State for judicial purposes, and attached to Wayne county for the election of a regent for the third circuit." Further on he says: "It is hardly necessary to say that subsequent legislation could not change the meaning or effect of any part of the constitution."

Speaking of the construction that should be given to the term "general election," Judge Campbell further says (44 Mich., 272), "a question arose in the Legislature of 1859 whether the election for Supreme Court Judges was not the next general election. The opinion of Mr. Howard, as Attorney General, was asked, and he reported his views at length, holding that the November election was the only one at which amendments could be voted on." House Journal 1859, p. 123. After a full consideration of the matter this view was adopted as correct, and all the amendments which have since been acted on have been submitted in the same way, until in 1875 the Legislature adopted and submitted for action in 1876, when it was ratified, a change which followed submission to the people either in the spring or fall, as should be determined." Public Acts 1875, p. 310.

The constitution, article 20, section 2, knows but one general election, and that is the biennial election held in the fall. And yet since the amendment to the constitution in 1876 there has been a popular idea, generally accepted by the people, that the election held in the spring at which Judges of the Supreme Court and regents of the University were elected, were general elections, at least so far as these officers were concerned.

And in the case of the Attorney General vs. Burch, decided the present term of the Supreme Court, Judge Morse, in delivering the opinion of the court, uses this language:

"Any spring election at which Justices of the Supreme Court and regents of the University are elected is necesssarily also a general election, and is now so regarded."

Section 677 of Howell's Statutes provides: "The annual meeting of each township shall be held on the first Monday in April in each year, and at such meeting there shall be an election of the following officers: One supervisor, one township clerk, one treasurer, one school inspector, one commissioner of highways, so many justices of the peace as there are by law to be elected in the township, and so many constables as shall be ordered by the meeting, not exceeding four in number."

It will be seen that this section speaks of the meeting as "an annual meeting in each township."

Section 10 of said act 263, of 1889, provides that a ballot shall be sealed up in an envelope and filed with the county clerk ten days preceding the election.

Section 677 of Howell's Statutes, above quoted, provides, among other things, that at township meetings the electors shall elect "so many constables as shall be ordered by the meeting, not exceeding four in number."

This provision gives the voters a right at the township meeting to determine the number of constables; how the ticket, to be printed ten days previous, is to be filed with the county clerk?

Article two of the constitution, section one, provides for an annual township meeting on the first Monday of April, in each organized township, and provides for the election of "a supervisor, township clerk, commissioner of highways, township treasurer, school inspector, not exceeding four constables, and one overseer of highways for each highway district."

It will thus be seen that by the constitution of this State the town meeting is provided for, and the officers to be elected are severally mentioned.

Section 701 of Howell's Statutes provides: "At the election of officers required to be chosen by ballot at annual township meeting, the inspectors of election shall be the same as at the general election."

This section clearly makes a distinction between a township meeting and a general election. Otherwise the section would read, "Inspectors of election shall be the same as at the other general elections."

The title of act No. 263 only applies to "general elections in this State;" and, although the general election and the several local elections and township meetings may occur at the same time, and are conducted by the same officers, the law does not require the general ticket to contain the names of local officers.

The constitution provides both for a "general election" and a "township meeting," and when these occur on the same day, it is the duty of the officers, who act both as local officers of the township and as inspectors of the general election, to so discharge the several duties imposed upon them that the interests of the people at large, and the local interests of the township, shall be fully protected.

The ticket containing the name of the Supreme Court Judge and regents of the University, being a general ticket must be printed under the supervision of the Secretary of State.

And inasmuch as it has been the custom in this State for years to print the names of candidates for circuit judges on the State ticket under the

head of judicial ticket, I would recommend that in those circuits where circuit judges are to be elected the names of the nominees be furnished to the Secretary of State by the proper local parties, and that the Secretary of State be requested to print the name of such candidate on the State ticket under the head of judicial ticket, giving the number of the circuit.

All those provisions of act 263 of the session laws of 1889 must be carried into effect by the local officers concerning the State ticket, and the provisions concerning booths and the manner of voting should be observed, as near as may be, in voting any ticket at such election.

The inspectors at the general election being the same persons who have charge of the local elections, would have a right, and it would be their duty, to enforce the reasonable regulations of the general law as to the manner of voting the local ticket, for the purpose of protecting the good order and legality of the general ballot

Sufficient ballot boxes should be provided for the various tickets, so that the general ticket may be put in one box, the local ticket in another, and if there should be other tickets, that they may be placed in their respective boxes.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Relief of Indigent Soldiers.—Authority of Clerk.—Disposition of Relief Fund.

Under act 193 of the session laws of 1889 the township clerk can pay only such sums for the relief of needy soldiers as are determined by the soldier's relief commission and the township board. Amounts awarded must be paid monthly. The fund must not be exhausted by the payment to any one soldier, simply because no other application is then on file.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 21, 1891.

JAMES E. DURDEN, ESQ., *Keelersville, Mich.:*

DEAR SIR—Your favor asking my opinion concerning the manner of payment to soldiers out of the "Soldier's Relief Fund," and whether or not the township clerk can pay over to the only soldier in the township all of the money belonging to such fund, without orders from month to month from the soldier's relief commission, is duly received.

The law contemplates that the soldier's relief commission and the township board of the township shall meet together and determine who among the soldiers of such township as are reported as needy, are entitled to relief, and how much should be paid each month to each of such soldiers.

This finding of the amount to be paid each month is then filed with the township clerk. The statement of course thus prepared by the soldier's relief commission and the township board of the township, will show definitely the amount of money that each soldier on the list is entitled to draw from the soldier's relief fund. After the fund is raised, the township clerk without further order from anybody, is authorized to issue his warrant, or order, each month on the township treasurer for the amount due to each person as appears by the list furnished him by the soldier's relief commission and the township board.

The township clerk can pay only such sums as are named in such list, and must pay monthly.

He would not be authorized without direction by the soldier's relief commission and township board to pay over all of the money to any one person; and it is not the intention of the law that the money shall be paid faster than from month to month. By reference to section four of said act 193 of the session laws of 1889, it will be seen that the commission shall hear and determine all emergency petitions or claims for relief, and authorize the payment of the same if allowed. Claims are liable to be filed in any portion of the year; and I conclude from this that the statute does not contemplate that the relief commission and township board shall pay out all the money on hand at any one time, to any one soldier, simply because there are no other petitions then on file; but they should provide for the wants of the petitioner from time to time according to the best of their judgment, and as above stated. When they have once made an order as to the amount that shall be paid in each month, that order will remain in full force, and authorizes the clerk to issue his order on the treasurer during each following month in that year unless otherwise ordered by the soldier's relief commission and township board.

Very truly yours,
A. A. ELLIS,
Attorney General.

Salaries.—Right to Pay Officer de facto.—Remedy of Officer de jure.

Treasurers who are charged with the duty of paying official salaries have the right to rely upon the apparent title of an officer *de facto*, and cannot withhold payment of salary to such officer when demanded, even though notice to that effect is served on him by the officer *de jure*. Where the salary is paid to an officer *de facto* it can not be paid a second time to an officer *de jure*, and the right of action of the officer *de jure* for his salary is against the officer *de facto*.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 23, 1891.

HON. FREDERICK BRAASTAD, *State Treasurer, Lansing, Mich.:*

DEAR SIR—Your favor by A. D. Garner, Esq., Deputy State Treasurer, concerning the claim of Allen C. Adsit against the State of Michigan, for salary as Circuit Judge of the 17th Judicial Circuit, from December 16, 1890, to February 5, 1891, asking my opinion as to whether you, as State Treasurer, can legally pay the claim, is received and considered.

The facts bearing on the matter are briefly as follows: The Legislature of 1889, by act No. 97, provided for an additional Circuit Judge of the 17th Judicial Circuit; and declares that the additional office of Circuit Judge of such circuit, created by the act, should be vacant from the time the act took effect. "The said vacancy shall be filled by appointment by the Governor, the person so appointed to hold his office, provisionally, from the time of his appointment until the general election of township officers in the spring of eighteen hundred and ninety-three, or until his successor shall be elected; and the term for which said judge shall be appointed shall expire December 31, eighteen hundred ninety-three."

In compliance with the provisions of the said act, Governor Luce appointed Marsden C. Burch to fill the vacancy thus occasioned by this act.

It was contended that said act, so far as it attempted to appoint a Judge to hold over after a general election, was unconstitutional and void. And prior to the general election of November, 1890, request was made of the Secretary of State to give the notice provided by statute, that a Circuit Judge would be elected in such circuit at the general election of 1890. This notice the Secretary of State refused to give, and, thereupon, proceedings were taken by *mandamus* to compel such notice to be given; but no decision being had thereon, notice was given by publication and otherwise. And Allen C. Adsit was nominated to fill such vacancy, no person being nominated on the opposite ticket against him.

It was contended that the law providing for said Circuit Judge was not legally passed; and Hon. Benj. Huston, Attorney General, commenced *quo warranto* proceeding against Marsden C. Burch to test the legality of the passage of said act.

After the election the Board of State Canvassers refused to canvass the votes for Allen C. Adsit; and thereupon a *mandamus* proceeding was commenced against such Board to compel them to canvass the vote and deliver the certificate of election.

In the January term of 1890 the *quo warranto* proceeding and *mandamus* proceedings were heard before the Supreme Court. And the Supreme Court held in the *quo warranto* proceeding that the said law was legally passed; and that Marsden C. Burch was legally appointed by the Governor to fill the vacancy created by such act, but that such appointment could not extend over a general election; and that so much of said act as attempted to continue the appointment after the said election, was unconstitutional and void. And in the *mandamus* proceedings, decided on the 5th of February, 1891, the Court granted *mandamus*, commanding the Board of State Canvassers to canvass the votes cast for the said Allen C. Adsit. And thereupon after the canvassing of such vote, a certificate of election was duly delivered to said Allen C. Adsit as Circuit Judge, and he entered upon the discharge of the duties of the office.

On the 16th day of December, 1890, Allen C. Adsit qualified as Circuit Judge by taking his oath of office, and delivering the same to the Secretary of State. And on the 17th day of December, 1890, Mr. Adsit served on the State Treasurer the following notice:

"SIR—You are hereby notified that I have been duly elected and qualified Circuit Judge of the 17th Judicial Circuit, to fill the vacancy, in place of Marsden C. Burch, whose term of office has expired by constitutional limitation. You are further notified that I claim the salary attached to said office, from and after this date.

Respectfully,
ALLEN C. ADSIT."

In December, 1890, and in January, 1891, Marsden C. Burch, while he was still occupying said office of Circuit Judge and performing the duties thereof, presented his account for salary of each of the said months, to the Auditor General, which was duly audited, and, thereupon, he was paid by the State Treasurer for the said respective months.

On the 13th day of February, 1891, Allen C. Adsit made written application for salary from the 16th day of December, 1890, to the 1st day of February, 1891. And afterwards during the same month, Marsden C. Burch made application to the State Treasurer for the salary from the 1st to the 5th day of February, 1891.

Mr. Adsit now claims that if the State paid Mr. Burch after notice, he, the rightful occupant, cannot be deprived of his salary by reason thereof.

Under the decision of the Supreme Court Allen C. Adsit was duly elected to the office of Circuit Judge, and was entitled to the office from and after the time the State Canvassers canvassed the vote of the other officers in December, 1890. And as such officer, is legally entitled to all of the salary that accrued to such office from that time. Such appears to be the doctrine held by the Supreme Court of the State of Michigan. An official salary is not made dependent upon the amount of work done, and belongs to the office itself without regard to the personal service of the officer.

People vs. Miller, 24 Mich., 458.
Auditors of Wayne Co. vs. Benoit, 20 Mich., 176.
Comstock vs. Grand Rapids, 40 Mich., 397.

But while Mr. Adsit is entitled to the salary of this office, it does not follow that it must be paid a second time by the State of Michigan. As already stated, the salary for the months of December and January has been paid by the State Treasurer to Marsden C. Burch, during the time that he was the actual incumbent of the office.

The title to an office can never be collaterally tried. The notice to the State Treasurer to withhold payment was nothing on which he could legally act. He had no authority to refuse payment to Marsden C. Burch. The duty devolving upon said State Treasurer to pay official salaries can not be safely performed unless he is justified in acting upon the apparent title of the actual incumbent. He has no right to withhold the salary of any officer occupying an office simply because some one gives him notice that he claims the same office. All he had such authority he would be vested with the authority to virtually test, at least to a limited extent, the right to hold an office.

Auditors of Wayne Co. vs. Benoit, 20 Mich., 176.
Comstock vs. Grand Rapids, 40 Mich., 397.
McVeany vs. Mayor, etc., N. Y., 80 N. Y., 185.
Dolan vs. Mayor, 68 N. Y., 274.

In the later case the Court says: "Disbursing officers charged with the duty of paying official salaries have, in the discharge of that duty, the right to rely upon the apparent title of an officer *de facto* and to treat him as an officer *de jure* without inquiring whether another has a better right."

While it is conceded that Allen C. Adsit was legally entitled to the salary, his right of action for all such sums as were paid to Mr. Burch while he held or withheld the office, is not against the State of Michigan, but is against Marsden C. Burch.

The People vs. Miller, 24 Mich., 458.
McVeany vs. Mayor, etc., New York, 80 N. Y., 185.
Dolan vs. Mayor, 68 N. Y., 275.
Comstock vs. Grand Rapids, 40 Mich., 397.

All that portion of the salary unpaid on the 5th day of February, 1891, should be paid to Allen C. Adsit. You are under no legal obligations to, and should not, pay to Mr. Adsit any salary for any period for which you have already paid Marsden C. Burch.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Agricultural College.—State Board of Agriculture.—Constitution.—Municipal Corporations.

Act 188 of the laws of 1861 to re-organize the Agricultural College of the State of Michigan, and to establish a State Board of Agriculture is not in violation of article 4, section 20, of the constitution. The corporation provided for by section 2 of this act is a municipal corporation and is not in violation of article 15, section 1, of the constitution.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb 26, 1891.

To the House of Representatives of the State of Michigan:

A copy of your resolution requesting my opinion as to the constitutionality of act No. 188 of the laws of 1861, as amended, being the act incorporating the State Board of Agriculture, is received and considered.

As your resolution calls attention to no specific defect, I briefly refer to the peculiar phraseology of the title:

Article 4, section 20, of the constitution provides, "No law shall embrace more than one object, which shall be expressed in its title."

The title of the act referred to in your resolution is, "An act to re-organize the Agricultural College of the State of Michigan, and to establish a State Board of Agriculture." The title of the act does not clearly express the object of the law, but when read in connection with the facts and prior legislation, which called for its enactment, it appears more definite.

Article 13, section 11, of the constitution provides for an Agricultural School; and further, that it might be made a branch of the University.

In 1855, by act 130, entitled, "An act to establish a State Agricultural School," an Agricultural School was organized and placed under the charge of the State Board of Education. (See Laws of Michigan, 1855, page 279).

Afterwards in 1861, the Legislature, desiring to take the State Agricultural School out of the control of the State Board of Education and place it in charge of a special board, organized for that purpose, passed act 188. The title of act 188, if it clearly expressed the object of the act, would be, "An act to change the name of the State Agricultural School to State Agricultural College, and to provide for a board of control for such college, to be known as a State Board of Agriculture." This is really what was done by the act under consideration, and such has been the practical construction of this act for thirty years; and although the title is not as clear as it might have been, still I am of the opinion that it is sufficiently definite, and no reasonable objection could be urged to this act at this late day by reason of the imperfection of its title.

The interpretation of the men who passed this law, and the subsequent practical construction, should have great weight; contemporaneous interpretation indicates the understanding with which the people receive it at the time, and as the act has been in practical operation for so long a time, it is fair to presume that the title was interpreted by the people as clearly expressing the objects which are provided for in the body of the act.

Cooley's Const. Lim. 81.

Frey vs. Michie, 68 Mich., 325.

I therefore conclude that there can be no legal objection to this act on account of its title.

Second, Is the corporation provided for by section 2 of this act a municipal corporation?

Article 15, section 1, of the constitution of Michigan provides, "Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes." Act 188 is a special act, and hence the question: Is the corporation provided for by section 2 of the act a violation of this provision? The section provides, "The State Board of Agriculture shall be a body corporate, capable in law of suing and being sued, of taking, holding and selling personal and real estate, of contracting and being contracted with, of having and using a corporate seal, and of causing to be done all that is necessary to carry out the provisions of this act." Outside of this section, there is nothing in the act that would render it unconstitutional by reason of being in violation of article 15, section 1; that is, even though this section was unconstitutional, the balance of the act could stand, and whether section 2 is constitutional or not depends on the answer to the question, what does the constitution mean by "corporations for municipal purposes."

Municipal has been defined to mean that which belongs to a corporation or city, and to include all the rules or laws by which a particular district, community or nation is governed. It may also mean legal, particular, independent.

Black. Com., 44.
2 Kent, 275.
2 Burr. Law Dict., 215.

In the case of State vs. Leffingwell, 54 Mo., 475, in construing a clause in the constitution of the State of Missouri (section 4, article 8), which reads as follows: "Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes," the court held, "A corporation for municipal purposes is either a municipality, such as a city or town, created expressly for self government, with delegated legislative powers; or it may be a subdivision of the State for governmental purposes. The phrase 'municipal purposes' was intended to embrace some of the functions of government."

Angell and Ames on Cor., Sec. 15-24.
Dill. Mun., Cor., 30-31.
Cooley's Const. Lim., Chap. 8.

Within the above definition, and included as "some of the functions of government" it can be well said that the education of the children of any community or State, and the promotion of the education of the people, is one of the most important interests and functions of government. The utility and durability of a popular government depends largely upon the education of its people.

Under our constitution, the State University and the Agricultural College are expressly provided for. I do not believe that the framers of the constitution intended to use these words "municipal purposes" in any limited sense, but they intended to use them in a broad, comprehensive way, so that if the Legislature saw fit, it might, by special enactment, promote any object that is embraced within the province and functions of popular government. The Legislature, under the constitution, if it had judged best, might have placed the Agricultural College in charge of the Regents of the University, who are made by the constitution, a body corporate; and with equal propriety they had a right to provide for a board of managers for the purpose, as expressed in article 13, section 11,

of the constitution, to "encourage the promotion of intellectual, scientific and agricultural improvement."

In construing the words "municipal purposes" in the case of Horton, Judge of Probate vs. Mobile School Commissioners, the Supreme Court of Alabama (43 Ala., 598), said, "the words 'municipal purposes' are not words of any definite, technical import, and they may be so construed as to apply to a corporation established to carry on the business of a public free school, and to raise funds for its support."

The construction placed upon section 1 of article 15 of the constitution of this State, for a long series of years has been that any corporation organized for educational purposes came within the clause 'municipal purposes' and this intention is evidenced by many acts incorporating public schools. After an examination of the construction of similar clauses in other constitutions, and considering the practical construction that has been given to this clause in our constitution, I am clearly of the opinion that the corporation provided for in act 188 of the session laws of 1861, is "a municipal corporation," and that said act is constitutional.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Township Treasurer.—Eligibility to Office.

Under section 751 of Howell's Statutes, which provides: "No person shall be eligible to the office of township treasurer for more than two years in succession." One who has held part of a term by appointment and a full term by election, is not entitled to re-election for a third term.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 4, 1891.

J. W. SEIGLMAN, ESQ., *Eagle River, Mich.:*

DEAR SIR—Your favor duly received and considered.

Section 751 of Howell's Statutes provides, "No person shall be eligible to the office of township treasurer for more than two years in succession."

It would seem that the Legislature intended to so arrange this law that a person who had settled twice as a treasurer in succession should not be allowed a third term, probably to prevent loss, and to cause an actual "paying over" to a successor.

It is my opinion that, as you have already held a part of a term and a full term, and with next settlement, have settled twice, that you come within the spirit of this law.

The section is not very clear, but certainly the Legislature did not mean to allow an election when a man would be disqualified by law before the term for which he was elected expired; and if this is so, they must have intended to provide against more than two terms.

As you have already had one term in succession of a former term, a part of which you held as treasurer, it would seem to me to hold that you can again be elected would be putting a proviso, concerning appointments, in the statute that is not embraced within its letter or reason. I therefore conclude that you are not eligible under section 751 above referred to for a re-election this spring.

Respectfully,

A. A. ELLIS,
Attorney General.

Contracts of Deposit.—State Moneys.—Charge for Transferring Funds.

The contract between the State Treasurer and the banks of deposit of State moneys does not authorize said banks to charge "for transferring funds." There is no precedent in banking business for paying a check in full and then charging exchange against the balance of a person's account.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 4, 1891.

A. D. GARNER, ESQ., *Deputy State Treasurer, Lansing, Mich.:*

DEAR SIR —I have examined the two letters from the State bank of St. Johns, to you; also their contract with the State Treasurer.

As I understand the case, Hon. George L. Maltz, ex-State Treasurer, made a check on said bank, and turned it over to the present Treasurer. The bank paid the check and now attempts to charge $10.28 "for transferring funds to Detroit, January 6th."

The bank above named was made a public depository in 1889, under a written contract, and all the conditions are fully embraced in its terms. The bank agrees to pay all checks and the interest at 3 per cent. There is no warrant in the contract for making any charge for exchange or for transferring funds; neither is there any precedent in banking business for paying a check in full and then charging exchange against the balance of a person's account.

I am clearly of the opinion that the State bank of St. Johns has no legal right to make the charge.

Yours truly,
A. A. ELLIS,
Attorney General.

Auditor General.—Withholding Lands from Sale.—Appearance in Court.

The Auditor General has no right under section 80 of act 195 of the Public Acts of 1889 to withhold tax lands from sale by reason of excessive taxes. Parties complaining of such excess should appear in court, and obtain such order as may be equitable in the premises.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 9, 1891.

To the Honorable, the Auditor General of the State of Michigan:

SIR—Your inquiry concerning the highway taxes on lots 2, 3 and 6 of section 1, lots 1, 2 and 5 of section 2, lots 1, 2 and 8 of section 26, and lot 1 of section 27 on Bois Blanc Island, Mackinac county, assessed for the year 1888, is received and considered.

Under certain circumstances, by virtue of section 80 of act 195 of the session laws of 1889, you would have authority to reject and withhold from sale certain lands.

It is claimed in this case that the trouble with the assessment of highway taxes is that the tax amounts to between eight and nine per cent, when the law only allows an assessment of one and one-half per cent. This being so, the tax in excess of the one and one-half per cent would be void. And you will further observe by reading section 81 of the same act, that

unless the lands are withheld from sale for particular reasons, that the Auditor General shall cause them to be sold the following year.

The reasons for withholding the lands in this case do not come within the excepted class, and hence if you should determine to withhold these lands from sale, they would have to be offered again the next year for sale with the taxes then assessed, and the contestant would be in no better position then than at the present time.

You will further observe by an examination of subdivision 5 of section 86 of said act No. 195 that, "If any illegality, omission or fraud effects the amount of the tax only, the tax shall be sustained so far as the same is just and legal."

It would appear in this case as above suggested, that even from complainant's own claim one and one-half per cent of these taxes are valid. And if contestants appear in court they would be entitled to deduction for all in excess of that amount. And again, I am very doubtful about your right under the law to make any judicial decision in this matter. The Auditor General's office and its powers are quite distinct from the powers and duties of a court. I therefore give it as my opinion, that the better way is to have the contestants appear in court and obtain such an order as may be equitable in the premises.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Holidays.—Right of Teacher to.—Term of 80 Days Includes.

A contract to teach for a term of 80 days is subject to such holidays as are provided by law, and the teacher is entitled to pay for the full term of 80 days without deduction for holidays.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 14, 1891.

W. T. KEENEY, ESQ., *North Aurelius, Ingham Co., Mich.:*

DEAR SIR—Your favor containing copy of teacher's contract received and read.

In the case of school district No. 4 vs. Gage, 39 Mich., 484, Campbell, C. J., says: "In regard to deductions for holidays we are of opinion that school management should always conform to those decent usages which recognize the propriety of omitting to hold public exercises on recognized holidays; and that it is not lawful to impose forfeitures or deductions for such proper suspension of labor. Schools should conform to what fairly may be expected of all institutions in civilized communities. All contracts for teaching during *periods mentioned* must be construed of necessity as subject to such days of vacation, and public policy as well as usage requires that there should be no penalty laid upon such observances."

And the learned judge in a subsequent case further says: "It appeared that the teacher had taught the full time provided by the contract, except upon holidays, which, as we have previously decided, the district could not deduct from his pay."

It seems clear to me that this rule would apply where the teacher is engaged to teach as in this case "for a term of eighty days." Our Court, in passing upon this question, uses the language "periods mentioned" and "time provided by the contract."

It is a general rule that usage of trade cannot be set up either to contravene an established rule of law, or to vary the terms of an express contract. But all contracts, made in the ordinary course of business, without particular stipulations, expressed or implied, are presumed to be made in reference to any existing usage to ascertain and fix the terms of the contract, and parties are presumed to contract in reference to a uniform and well settled usage pertaining to the matters as to which they enter into an agreement, where such usage is not in opposition to well settled principles of law, and is not unreasonable.

As there are no express limitations or restrictions in reference to this usage or custom in the contract under discussion, and such custom not being in conflict with established rules or well settled principles of law, but rather in harmony with them, and the parties presumably contracting in reference to such custom, this contract very evidently falls within this rule; and I therefore am clearly of the opinion that under the contract in question, the teacher is entitled to pay for the full term of eighty days.

Respectfully,
A. A. ELLIS,
Attorney General.

Township Clerk.—Women Not Eligible to Office of.

Under the constitution and laws of this State, a woman is not eligible to be elected to the office of township clerk.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 14, 1891.

C. W. HUBBARD, ESQ., *Davisburg, Mich.:*

DEAR SIR—Your favor of March 12th, asking if a lady is eligible to be elected to the office of township clerk, is received and read.

Section 782 of Howell's Statutes of the State of Michigan, being a part of chapter 19, entitled, "Townships and Township Officers," provides: "No person except an elector, as aforesaid, shall be eligible to any elective office contemplated in this chapter." This is followed by a proviso concerning school inspectors. The words "as aforesaid" refer back to section 781 of Howell's Statutes concerning the qualifications of electors, and here we find that elector means "as specified in the constitution." And the constitution provides article VII section 1, among other things, that an elector shall be "a male citizen." This would certainly exclude females. And inasmuch as a lady is not "a male citizen," it goes without saying, that she is disqualified and not legally entitled to be elected township clerk of your township.

Very truly yours,
A. A. ELLIS,
Attorney General.

Mistake of Board of Canvassers.—Contest of Election.—Burden of Proof.—Canvas of Returns.

Where a mistake is made by the board of canvassers, either in not withdrawing enough votes from the box before counting, or in tallying too many on the ballots that were in the box, it will not vitiate the election. Any interested candidate may contest such election by *quo warranto*, but he would have the burden of proving that the illegal votes were cast for his opponent. The board of canvassers should decide from the returns as certified to them, and declare the persons who received the greatest number of votes according to the certificate, elected.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 14, 1891.

N. W. BURDICK, ESQ., *Village Clerk, Mancelona, Mich.:*

DEAR SIR—Your favor of the 13th received and read.

Under section 2799 of Howell's Statutes it was the duty of the inspectors of election to canvass the votes received by them and declare the result; and on the same day, or on the next day, it was their duty to make a statement in writing, setting forth in words, at full length, the whole number of votes given for each office, and the persons for whom such votes for each office were given. This I understand your board of canvassers did. From your letter I take it that the canvassers made a mistake either in not withdrawing enough votes from the box before counting, or in tallying too many on the ballots that were in the box. Your letter is not quite clear as to whether the canvassers re-counted the ballots and found the ballots afterwards agreed with the number of votes shown on the poll list, but it seems to me as far as your question is concerned that is immaterial.

Under section 2800 of Howell's Statutes the council must act upon the written return made to them by the board of canvassers, and the person who has the greatest number of votes should be declared elected. The fact that the council adjourned can not affect the validity of the election, as they had a perfect right to take such reasonable time, adjourning from time to time, to consider the matter as in their judgment might seem necessary.

Of course any candidate interested in the result would have a right to contest by *quo warranto*, or such other way as the law may direct, but I do not think that the fact that the inspectors of election made a mistake would vitiate the election, and any person contesting the election would have the burden of proving that the very votes constituting the excess of votes in the box were cast for his opponent, and in case of such proof on contest, they would be deducted from the number of votes cast for such candidate. I do not see how under any circumstances the excess of ballots in this case would effect your election, except in the case of one trustee, and of course if the two ballots, in excess, were cast for the majority candidate and they were deducted, it would make a tie in that office, but before they could be deducted the minority candidate would have to establish which ballots they were and for whom they were cast, in a proper proceeding. As the matter now stands the board should decide from the returns as certified to them, and declare the persons who receives the greatest number of votes, according to the certificate, elected.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Opening of Polls.—Right to Vote Township Ticket Before Nine O'clock.

Under the general election law of 1889, the polls should be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and closed at five o'clock in the afternoon. Township tickets voted on general election days may be voted before nine o'clock.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 19, 1891.

FRED MCKENZIE, ESQ., *Red Jacket, Mich.:*

DEAR SIR—Your telegram asking at what time polls open at this spring election, received and read.

Polls should be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and closed at five o'clock in the afternoon. Section 4, act 263 of the session laws of 1879.

I presume your question is asked on account of the discrepancy between the "township meeting" law (Howell's Statutes, Sec. 704), and the "general election" law above quoted. As we vote for both local officers and State officers at the same election, I think the general law would govern. There might be some question about the right to vote a township ticket before nine o'clock, but still, I am of the opinion that after the polls are open, any ticket to be voted at said election, might be legally voted. At most, it would only be an irregularity, and irregularities by the board would not vitiate the election.

Respectfully,
A. A. ELLIS,
Attorney General.

Bounties to Soldiers.—Borrowing Money to Pay Bounties.

The Legislature has a right to authorize the payment of bounties to soldiers of the late war when they were not in any way promised or authorized at the time of enlistment or any time during the war.

The Legislature has no authority to authorize a loan by the State and the issuance of bonds to obtain money for the payment of bounties to soldiers, which bounties were not authorized or promised at the time of enlistment or during the war.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 24, 1891.

To the Honorable the House of Representatives:

Your resolution asking my opinion concerning the following propositions:

"*First*, Has the Legislature of this State at this time the constitutional right to authorize the payment of bounties to soldiers of the late war, which bounties were not in any manner promised or authorized at the time of enlistment or any time during the war?"

"*Second*, Has the Legislature authority to authorize a loan by the State and the issuance of bonds to obtain money for the payment of bounties to said soldiers, which bounties were not authorized or promised at the time of enlistment or during the war?" is received and considered.

To your first inquiry, I answer, yes.

Even though this bounty should be construed as a gift to such soldiers,

under article IV, section 45, the constitution giving the Legislature authority, by a vote of two-thirds of the members elect to each house, to appropriate public money for private use, the Legislature would have the authority to grant the bounty.

Second, While I am of the opinion that the Legislature has authority to vote bounties that have not been authorized or promised at the time of enlistment or during the war, and that they have authority to appropriate public moneys to pay the same, yet I find no authority in the constitution to bond the State in times of peace to borrow money to pay bounties that have not been promised or authorized in times of war. The only authority found in the constitution for borrowing money or pledging the credit of the State, is found in article XIV, sections 3, 4, 6 and 7. Said section 3 relates to deficits in revenue and limits the amount to be borrowed to fifty thousand dollars. Said section 4 gives ample authority to raise money for bounties, or to pay other debts contracted, "to repel invasion, suppress insurrection, or defend the State in times of war." Said section 6 provides that the credit of the State shall not be granted to or in aid of any person or corporation.

Said section 7 provides: "No scrip, certificates or other evidence of State indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized by this constitution."

Bonds are certainly "evidence of indebtedness" and by the section above cited, "No evidence of State indebtedness shall be issued * * * except for such debts as are expressly authorized by this constitution." Bounties given in times of peace, when not promised or authorized at the time of enlistment or during the war, are not debts "expressly authorized by the constitution," and however much I may desire that the soldiers' bounties may be equalized in this State, yet it seems clear to me to bond the State for such an object would be a plain violation of the constitution.

I must, therefore, answer your second question, that it is my opinion that the Legislature has not the authority to authorize a loan by the State to obtain money for the payment of bounties to pay soldiers when the bounties were not authorized or promised at the time of enlistment or during the war.

The State now has a right to raise money by issuing State bonds in the sum of $694,000, to pay bounties to Michigan soldiers. The first claim on this money, of course, would be to pay bounties which were promised during the war. After such bounties were paid, any surplus would be at the disposal of the Legislature to pay any other bounties that might be granted.

The State also has a fund to its credit with the general government of nearly half a million of dollars, which is to be returned to this State as our part of the direct tax money. This money which was taken from our people for war purposes, with the surplus of the fund that we have a legal right to raise by bonding the State, if the State desires, could be used to do equal justice towards all the Michigan soldiers.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Drain Commissioner.—Jurisdiction of County Drain Commissioner Over Township Drain.

Section 4 of chapter 2 of the drain laws of 1889, does not give a county drain commissioner jurisdiction to clean out, widen and extend a drain established by a township drain commissioner and traversing only one township and effecting lands only therein.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 2, 1891.

GEORGE A. MARK, ESQ., *Hillsdale, Mich.:*

DEAR SIR—Your favor duly received and read.

I do not think that section 4 of chapter 2, as referred to in your letter, gives a county drain commissioner jurisdiction to clean out, widen and extend a drain established by a township drain commissioner, and traversing only one township, and affecting lands only therein.

Section 1 of chapter 8 of the drain law provides that in cleaning, widening, etc., any drain in any township or townships in which such drain is situated, application shall be made to the commissioner by whom it was constructed, or his successor in office: "*Provided*," it says, "That in case of an established county drain, having its beginning, entire course and terminus within any township * * * the owners of lands to be assessed therefor may make application * * * to the county drain commissioner for a transfer of the jurisdiction of said drain to the township drain commissioner."

These two sections of the statute must must be construed together, and when so construed, they would not give the county drain commissioner jurisdiction in a case like the one you mention.

Yours truly,
A. A. ELLIS,
Attorney General.

Recording Assignments of Mortgages.—Residence of Assignee.

Under section 12 of Act No. 262 of the Public Acts of 1887, the assignee of a mortgage is not entitled to have his assignment recorded by the register of deeds unless his residence is given in the assignment.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 9, 1891.

HOMER A. DAY, ESQ., *Register of Deeds, Flint, Mich.:*

DEAR SIR—Your favor asking for the construction of section 1170m[3] Howell's Statutes, Vol. 3, received and read.

This law to which you refer is very crude, and without a very strict construction would have very little tendency to remedy the evil attempted to be reached by the Legislature.

The assignee of the mortgagee would not be, under a usual interpretation of the statute, included in the word mortgagee. He takes the place of the mortgagee. I think that the law really means that any paper recorded affecting the mortgage must show the name of the holder of the mortgage. This, of course, would include the assignee of the mortgagee; and a register of deeds, taking into consideration the evil intended to be remedied, should

refuse to record all assignments of mortgages where the name of the assignee is not given in the assignment. If any person was injured thereby, he would certainly have his remedy in court by *mandamus* to compel the placing of the assignment on record, and inasmuch as it is a reasonable requirement, and any other construction would annul the statute, I believe the Supreme Court would hold that a register of deeds is not obliged to record assignments of real estate mortgages, only in those cases where the residence of the holder of the mortgage is given.

Very respectfully,
A. A. ELLIS,
Attorney General.

Statutes.—Construction.—Indigent Soldiers.

Construction of the statute for the relief of indigent Union soldiers, being act 193 of the laws of 1889.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 10, 1891.

GEORGE E. TAYLOR, ESQ., *Dep. Chairman Soldier's Relief Commission, Newaygo, Mich.:*

DEAR SIR—Your favor of the 9th, asking my opinion concerning the construction of the act for the relief of indigent Union soldiers, being act number 193, of the session laws of 1889, is received and considered.

Said act is rather ingeniously drawn, and it attempts to and does provide within itself a remedy in case of the failure of any particular officer to perform his duties.

Section 1 of the act provides that the board of supervisors of the several counties in this State shall levy a tax not exceeding one-tenth of one mill, for the purpose of creating a fund for the relief of honorably discharged indigent Union soldiers, sailors, mariners and the indigent wives and minor children of such indigent or deceased union soldiers, sailors and mariners; and it further provides that in case the whole amount is not used in any one year, that it shall be considered in raising future sums therefor.

This section, it will be seen, provides for one-tenth of one mill in all cases, without any action of any township officer, or any action on the part of the commission.

Section 3 of the act, however, provides that a member of the township board or a member of the board of trustees, councilmen or aldermen may meet with the soldiers' relief commission during the month of May and determine the probable amount necessary. If this commission does meet, they would have a right to recommend a less amount than one-tenth of one mill, otherwise, it would be the duty of the board of supervisors to levy the whole amount of one-tenth of one mill, if, in their judgment, so much would be necessary.

Section 4 of the act provides for a meeting of the township board and the soldier's relief commission for the purpose of preparing a list of persons who are entitled to relief and how much should be paid each month to each of such persons. This finding of the amount to be paid each

month is then filed with the township clerk. The statement thus prepared by the soldier's relief commission and the township board of the township will show definitely the amount of money each soldier on the list is entitled to draw from the soldier's relief fund after the fund is raised. The township clerk, without further order from anybody, is authorized to issue his warrant or order each month on the township treasurer for the amount due to each person as appears by the list furnished by the soldiers' relief commission and the township board.

In case the township board should fail to meet with the soldiers' relief commission, it would then be the duty of the soldiers' relief commission to not only hear the claims that might arise from time to time, but they would have a right, and it would be their duty under said section 4, "To hear and determine all emergency petitions or claims for relief, and authorize the payment of the same if allowed." The neglect of the township board would certainly cause an emergency in every case.

It is my opinion that this section is broad enough to include every person who is entitled to relief in any township in the county.

If the township board fails to co-operate with the commission, they would have authority under the law to act on the application of any person, not only for temporary relief, but for permanent relief during the year, subject, however, to the proviso in section 4, that no claim shall be allowed and paid which will create a deficiency in the fund applicable to the payment of the regular, ordinary relief.

After the relief commission have made an order requiring the township clerk to pay money to any soldier, sailor, mariner or any indigent wife, widow or minor child of any indigent or deceased Union soldier, sailor or mariner, the township clerk has no authority under the law to refuse to give his order, except that such order would create a deficiency in the then present fund.

The township clerk cannot review the action of the relief commission, and the commission is made, in certain cases, sole judge of the distribution of this fund.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Taxation of Money in Foreign Bank.

Under section 10 of the general tax law of 1889, money which is deposited in banks of other states, and not invested permanently in bank stocks, is taxable where the owner resides.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 14, 1891.

W. B. KEYSOR, ESQ., *Clinton, Mich.:*

DEAR SIR—Your favor of the 12th inst., asking whether, in my opinion, you have a right to assess money in a savings bank in Chicago, the owner living in your township, is received and considered.

Section 1170a[5], 3 Howell's Statutes, provides that "All personal property except as hereinafter provided shall be assessed to the owner in the township of which he is an inhabitant."

Section 1170a[1] provides that "For the purpose of taxation * * personal property shall include * * * all goods, chattels and effects belonging to the inhabitants of this State situate without this State, except that property actually and permanently invested in business in another State shall not be included."

Your card does not state whether the money to which you refer is on deposit or is invested in shares of stock. The answer to your question must depend largely upon this. If the money is there simply as a deposit and not invested permanently in bank stocks, I am of the opinion it is taxable where the owner resides.

Very truly yours,
A. A. ELLIS,
Attorney General.

Dog Tax. Apportioning Money in Dog Tax Fund.

Under section 2126 of Howell's Statutes, and act No. 214 of the laws of 1889, only that part of the dog tax fund shall be apportioned which exceeds $100.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 18, 1891.

WILLIAM A. HAAK, ESQ., *Bellville, Mich.:*

DEAR SIR—Your favor concerning the distribution of dog tax money is received and read.

The section you refer to in your letter as section 728 of Township Officer's Guide is section 2128 of Howell's Statutes, and section 2 as added by act 214 of 1889. (See Act 214, 1889.)

The two acts are jumbled together in the one section to which you refer. The part of the section pertaining to this matter in dispute reads: "If money remains of such fund after satisfactory payment of all claims aforesaid in any one year, over and above the sum of one hundred dollars, it shall be apportioned, etc."

The first question is, What did the Legislature intend by making a limit of one hundred dollars? The only possible reason for such a limit would be that the fund should have at least one hundred dollars to its credit.

Second, The statute says, *money* remaining of such fund * * * over and above one hundred dollars, *it* shall be apportioned. It seems clear to that the "it" relates to the money over the one hundred dollars, otherwise I can see no sense at all in the provision. If it were otherwise, if there was just one hundred dollars, nothing would be apportioned, but if it was one hundred dollars and one cent all would be taken out of the fund. I do not think the Legislature so intended, and I am clearly of the opinion that the money to be apportioned is the sum over one hundred dollars.

Yours truly,
A. A. ELLIS,
Attorney General.

Township Boards.—Constables.—Vacancies in Office.

Township boards may fill vacancies caused by the resignation of a constable.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 22, 1891.

C. E. ROLPH, ESQ., *Wilmot, Mich.:*

DEAR SIR — Your favor of the 18th inst. duly received.

Section 729 of Howell's Statutes vests in the township board the power to fill all vacancies in township offices, except in that of treasurer and justice of the peace. This would, of course, give them the right to fill the vacancy caused by the resignation of a constable.

Section 762, to which you refer, does not, I think, have any bearing on this question. The decisions cited there relate to cases where an attempt is made, not to fill a vacancy, but to create and appoint an officer with the power of constables without any election at all.

Very respectfully,
A. A. ELLIS,
Attorney General.

School Officer.—Right to Delegate Authority.—School Contracts.

The school moderator has the right to give the director a written permit to sign his name to school papers or contracts previously authorized by the board, but he cannot delegate to the director the authority to act in his stead in any case where discretion is to be exercised. Contracts signed by a majority of the school board are binding.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 22, 1891.

C. A. COFFIN, ESQ., *Lenawee Junction, Mich.:*

DEAR SIR — Your favor of the 16th inst. asking whether, in my opinion, a school moderator has any right to give the director a written permit to sign his name to school papers, such as contracts and money orders, and whether a contract would hold good if drawn by the director, he signing both names under this authority, is received and considered.

It is a general rule of law that any person has a right to direct that his name be signed by some one else, and if this authority is given in writing he is then bound by the signature, although he is not personally present at the time. Therefore, I do not think there is any question but what a moderator has the right to give the director a written permit to sign his name to school papers, or contracts previously authorized by the board, although it is a practice which is not commendable for various reasons, and should be discouraged.

Of course a moderator cannot delegate to the director the authority to act in his stead, or do anything only to sign his name for him after the contract was authorized by the board.

Your second question would be governed by the number of school

officers. If there are but three, the contract would be binding if the director signed his name and the moderator's by written authority under the above conditions.

Very respectfully,
A. A. ELLIS,
Attorney General.

Reporting Mortgages for Taxation.—Fees of Register.

A register of deeds is entitled to pay for reporting to assessing officers for taxation, all unpaid mortgages for each year. Where the law does not provide for a revision of the list, he is not entitled to pay for mortgages previously reported.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 1, 1891.

J. H. HEPBURN, ESQ., *Clerk and Register of Deeds, Ludington, Mich.:*

DEAR SIR— In further reply to your favor asking for my opinion as to whether a register of deeds is entitled to pay for reporting mortgages to assessing officers for taxation, where they have been reported in previous years, I would say that, after a very careful examination of the statute, and construction of similar statutes, it is my opinion that the intention of the law is that the register of deeds shall furnish for the benefit of the supervisor a list of unpaid mortgages for each year. He can do this by adding the new mortgages to the old list; and for furnishing this list each year, he is entitled to ten cents for each mortgage reported, which was added that year.

The law does not seem to provide for a revision of the list, and hence the supervisor has no light as to whether mortgages previously reported, are paid or not; and the register would not be entitled to pay for mortgages previously reported, but only for those furnished each year.

Yours truly,
A. A. ELLIS,
Attorney General.

Incompatible Offices.—Sheriff and Supervisor Incompatible Offices.—Vacating Office by Accepting Incompatible Office.

A person who accepts one office while occupying another incompatible with it, *ipso facto* absolutely vacates the first office. The office of under-sheriff and supervisor are incompatible, and one man cannot legally hold both offices.

STATE OF MICHIGAN,
ATTORNEY GENERAL' OFFICE,
Lansing, May 2, 1891.

JOHN J. MCCARTHY, *Prosecuting Attorney, Mio, Mich.:*

DEAR SIR—Your favor asking whether a supervisor could hold the office of under-sheriff at the same time he was acting as supervisor, was received and read.

I have carefully examined the question submitted by your letter, and

while I find no constitutional nor statutory prohibition, yet I am clearly of the opinion that these two offices are incompatible, and that by taking one office, whichever one is received last, the party thus accepting it would vacate the other office.

It is not the policy of our law to allow a man to hold an office by which he could pass upon his own bills, approve his own bonds, and fix the compensation which he, or his superior officer, was to receive for boarding the county prisoners.

An under-sheriff may become sheriff himself, and he can at least perform all, or nearly all the functions of sheriff. The disqualifications to hold the two offices come by implication. It is the universal doctrine of the courts that a person shall not hold incompatible offices.

By reference to Cooley's Constitutional Limitations, 748, note 1, you will find the doctrine somewhat discussed, and the rule above referred to fully sustained. That writer says: "Incompatibility between two offices is an inconsistency in the functions of the two, as judge and clerk of the same court; officer who presents his personal account for audit, and an officer who passes upon it."

In the case of Wilson vs. King, 14 Am. Dec. 84, it was held that the office of deputy-sheriff and justice of the peace were incompatible, and that one who accepted the latter office, by necessity vacated the former.

Stubbs vs. Lee, 64 Me., 195.

People vs. Hanifan, 96 Ill., 420.

State Bank vs. Curran, 10 Ark., 142.

Cooley's Const. Lim., 748 n. I.

In Mechem's Public Offices and Officers, Sec. 420, the doctrine is laid down plainly in this language: "It is a well settled rule of the common law that he, who while occupying one office, accepts another incompatible with the first, *ipso facto* absolutely vacates the first office, and his title is thereby terminated without any other act or proceeding. That the second office is inferior to the first does not affect the rule." See authorities cited under the above.

From the very nature of the case, and after an examination of authorities, I am clearly of the opinion that under the laws of this State, no man is entitled to hold or can hold both the office of supervisor and under or deputy-sheriff, and that if a person is elected and qualifies as supervisor, after he is appointed under-sheriff or deputy-sheriff, that he thereby vacates the office of deputy or under-sheriff, and that if a person who holds the office of supervisor during his term of office accepts an appointment, and qualifies as deputy or under-sheriff, he thereby vacates the office of supervisor.

Respectfully submitted,

A. A. ELLIS,

Attorney General.

Voting at School Meeting.—Right to Vote to Purchase School House Site.

Individuals not possessing taxable property have no right, under the present law, to vote on the question of changing a school house site, when money must be raised by taxation to pay for the new site when selected.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 6, 1891.

WALTER HYDE, ESQ., *Sugar Grove, Mich.:*

DEAR SIR—Your favor of the 1st inst. asking whether, in my opinion, a woman who has children on the school census has the right to vote on the question of changing the school house site, when there is no money in the treasury to pay for the new one, if so selected, is received and considered.

In answering the question, I shall assume that she has been a resident of the district the required length of time.

The statute declares that such persons shall be entitled to vote on all questions "which do not directly involve the raising of money by tax." Therefore, the only question to be here determined, is whether the changing of a school house site "directly involves the raising of money by tax."

The changing of the site will necessarily "involve," according to the definition of Webster, the raising of money by tax, and so I am inclined to believe that this question falls within the provision of the statute above referred to, and that any individual, not possessing taxable property, has no right under the present law, to vote on the question of changing a school house site, when money must be raised by taxation to pay for the same, if so selected.

Yours truly,
A. A. ELLIS,
Attorney General.

Circuit Court Commissioners.—Employment of Stenographers.—Evidence.

A circuit court commissioner has no right to employ a stenographer at the expense of the county to assist him in taking evidence in a proceeding to remove a public officer. Circuit court commissioners have no authority to rule out any evidence which either party desires to have taken down, but must take down the objections and then take the answers.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE
Lansing, May 9, 1891.

A. P. SMITH, ESQ., *Gladstone, Mich.:*

DEAR SIR—Your favor concerning proceedings for removal of justice of the peace, and asking

First, Whether you are authorized to employ a stenographer at the expense of the county; and

Second, As to your powers to rule on evidence, is received and considered.

Your authority is largely controlled by section 657 of Howell's Statutes, as amended in 1883. Your compensation, of course, is fixed by the general law; so much for swearing witnesses, so much for return, and so much per folio for evidence taken. You can either do the writing yourself, or cause it to be done, but the county would be under no obligation to pay for the

writing but once, and so if you employed a stenographer, he would have to be paid per folio, and it would take just so much out of your compensation. This is often done, and the commissioner and stenographer divide the compensation. Your fees would be controlled by section 9010 Howell's Statutes, which provides, among other things, $3.00 per day, 10 cents per folio.

Second, Concerning the evidence, I do not think you would be authorized to rule out any evidence which either party desires to have taken down, as the Governor must pass upon the evidence finally. You would do the same as commissioners generally do, take down the objections, and then take the answer.

The law contemplates that after you have taken all the evidence desired by either party, that you will then go through and make an abstract of it, what you deem material, and add your opinion thereto, and then deliver the entire evidence, the abstract and the opinion, to the prosecuting officer to be delivered to the Governor.

Yours very truly,
A. A. ELLIS,
Attorney General.

Summer Normals.—Institute Money.

Under sections 154 to 159 inclusive, of the school laws of 1889, the Superintendent of Public Instruction is not authorized to pay any part of the institute money to the conductors of summer normals.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 9, 1891.

HON. HUGH BROWN, *Dep. Supt. Pub. Instruction, Lansing, Mich.:*

DEAR SIR—Your inquiry as to whether the Superintendent of Public Instruction is authorized to pay any part of institute money to conductors of summer normals, is received and considered.

Sections 154 to 159 inclusive of the school laws, provide for the raising and disposition of the institute money, and it will be seen that section 159 provides: "In case the institute fund in any county shall be insufficient to defray the necessary expenses of any institute held under the provisions of this act, the Auditor General shall, upon the certificate of the superintendent that he has made arrangements for holding such institute, and that the county institute fund is insufficient to meet the expenses thereof, draw his warrant upon the State Treasurer for such additional sum as said superintendent shall deem necessary for conducting such institute."

If you expend institute money for summer normals, you can in that way exhaust the fund, and ask the Auditor General to draw his warrant on the State Treasurer for an institute in every county in the State. This would be a very nice, indirect way of having the State furnish money to run summer normals, but it would be in plain violation of law, and certainly cannot be tolerated.

Sections 173 and 174 of school laws expressly forbid use of public money for any purpose not authorized by law; and sections 178 and 179 provide severe penalties for such use.

There is no provision in the law for using institute money for summer normals, and such use would be in violation of said sections 173 and 174, and subject the parties so using the same to the penalties provided in sections 178 and 179.

I must, therefore, give it as my opinion that the Superintendent of Public Instruction is not authorized to allow any part of the institute funds to be used for summer normals.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Abstract Books.—Taxation.

Abstract books have no intrinsic value, and are not taxable.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 14, 1891.

N. L. BEDINGER, ESQ., *Berrien Springs, Mich.:*

DEAR SIR—In further reply to your favor asking whether or not in my opinion a set of abstract books that are valuable, and yield to their owner a large income, are subject to taxation, I would say that in the case of Joel Perry vs. the city of Big Rapids, 67 Mich., 146, the majority of the Supreme Court held that abstract books, referring to land titles, have no *intrinsic* value and are not taxable, and cites the case of

Dart vs. Woodhouse, 40 Mich., 399.

In the case above referred to Morse, Justice, gave a dissenting opinion and held that such books were subject to taxation. I was of the same opinion in examining the statute and still believe that would be the better rule, but probably the Supreme Court in case of contest would adhere to their former decision; this being so it would be better not to place abstract books on the list.

Very truly yours,
A. A. ELLIS,
Attorney General.

Reports of Board of Education.—Deeds of School Property.

A report made by the board of education to the county clerk as a report of the "board of education" is sufficient. They may, however, sign as inspectors. It would seem that the power of the board of education to sell the property of the schools and give a deed would depend upon the vote of the district, as to whether or not they needed the property.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 18, 1891.

HENRY B. FREEMAN, ESQ., *Prosecuting Attorney, Au Train, Michigan:*

DEAR SIR—Your favor of May 11th is received.

Section 76 of the general school laws of 1889 provides: "The clerk of each county shall, on receiving from the secretary of the county board of

school examiners the annual reports of the several boards of school inspectors, file the same in his office. On receiving notice from the Superintendent of Public Instruction of the amount of moneys apportioned to the several townships in his county, he shall file the same in his office, and forthwith deliver a copy thereof to the county treasurer."

On examination of the reports of the various boards of school inspectors in the office of the Superintendent of Public Instruction, I find that those districts having a board of education usually make their reports as boards of inspectors, but are signed by the members of the board of education, and several of these reports are made as a report of the "board of education."

I think that a report made by the board of education would be sufficient, at least it is not so material that the county clerk should raise any question in the matter. If, however, the clerk desires to "split hairs," let the board sign as inspectors, as by the act they fill that place.

Concerning the power of the board of education, without a vote of the electors of the township, to sell the property of the schools and give a deed, I would call your attention to section 19, and subdivision 8 of section 27 of the general school laws of 1889.

It would seem by reading the two sections together that the district has the right to say; first, as to whether or not they need the property, and if they do not or so decide, the inspectors would have the right to sell.

If there is any matter at issue concerning this last question, I would prefer that you state the circumstances fully and I will try and assist you.

Yours respectfully,

A. A. ELLIS,
Attorney General.

Library Commission.--School Library Moneys.

Under sections 122, 123 and 176 of the general school laws of 1889, school libraries and library money cannot legally be turned over to a library commission appointed under chapter 197 of Howell's Statutes.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 25, 1891.

C. F. BABCOCK, ESQ., *Wyandotte, Mich.:*

DEAR SIR—Your favor to the Superintendent of Public Instruction asking whether there is any provision in the school laws by which the school library and library money can be turned over to a library commission appointed under chapter 197, Howell's Statutes, has been referred to this department for reply.

Under sections 122, 123 and 174 of the general school laws of 1889, it is my opinion that the school library and library money cannot be turned over to a library commission appointed under the chapter above referred to.

Yours truly,

A. A. ELLIS,
Attorney General.

Inland Lakes.—Right to Regulate Fishing in.

Pine lake, Charlevoix county; White lake, Muskegon county; and Black lake, Ottawa county, are inland waters, but subject to the maritime jurisdiction of the general government. The State, however, has the right to regulate the manner of fishing in such waters, and its officers the right to enforce such law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 26, 1891.

HON. CHAS. S. HAMPTON, *State Game and Fish Warden, Petoskey, Mich.:*

DEAR SIR—Your favor of the 16th inst., the first, second and third questions of which were answered by telegram of May 19, is received.

The fourth and fifth questions as to the seizure of nets, I think are answered by my communication above referred to, and I therefore proceed to the consideration of the sixth and seventh relating to the question of whether Pine lake, Charlevoix county; White lake, Muskegon county; and Black lake, Ottawa county, lying wholly within this State, but connected with the great lakes by navigable channels, are inland waters; and whether the State has a right to regulate the manner of fishing on such waters.

I think they are necessarily inland waters, as they lie wholly within the borders of the State, but under the decision of the United States Supreme Court, 10 Wall. 557, they are navigable waters, subject to the maritime jurisdiction of the general government. This, however, does not preclude the State from passing laws to regulate the manner of fishing in such waters, nor officers of the State from exercising their duties in enforcing such law, so long as the State or its officers do not intrude upon the rights and authority of the general government.

Very respectfully,
A. A. ELLIS,
Attorney General.

Offices.—Prosecuting Attorney.—City Alderman.—City Marshal.—Collector of Taxes.—Nominations by Acclamation.—Carrying Away Election Slips.

Prosecuting attorneys can hold the office of city aldermen. Nominations by acclamation will not vitiate an election. A city marshal may hold the office of collector of taxes. Under the election law of 1889, the carrying away of slips would not render one liable criminally.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 27, 1891.

H. RAZEK & Co., *Harrison, Mich.:*

GENTLEMEN—Your favor containing four inquiries received. You make no explanation why you have submitted these four abstract questions to this office. I assume that you are laboring under the impression that the Attorney General is authorized, and it is his duty to advise every person, firm and corporation who are in any doubt as to the law touching any matter in which they may have some personal interest, or the local public may be in the least interested. Permit me to say that such is not the law, yet I get a great many inquiries like yours, all sent in good faith no doubt, under the impression above indicated; or, perchance, the writers know of

my even disposition, and know that I will, as far as possible, accommodate them.

Your questions:

First, "Can a prosecuting attorney of a county hold the office of city alderman?"

Answer. As a general rule, he can. There might be cases when the charter of the city prohibited it, and in such case he could not.

Second, "Is it legal to nominate city mayor by acclamation?"

Answer. If you mean by this, Does the fact that a mayor is nominated by acclamation vitiate the election? I would answer that the person elected or who received the greatest number of legal votes is entitled to the office, even though he was never nominated at all, i. e., run in on a "stub ticket." Being nominated by acclamation does not vitiate the election.

Third, "Can the city marshal hold the office of collector of taxes?"

Answer. Usually he can, but the office is always controlled by the charter, and I could not tell unless I saw the provision governing it. If there is nothing in the charter of the city prohibiting it, he certainly could.

Fourth, "Can the board of election handle and hide a lot of slips of a candidate running for office?"

Answer. Of course they could do it, but it would not be legal, and any person who was injured might have a right of action if he could establish the fact that such action injured him. I hardly think the election law is broad enough to punish one for carrying away slips.

Yours truly,

A. A. ELLIS,

Attorney General.

Transfer of State Patients.—Auditing Accounts.

The bills of the Superintendent of the Asylum for Insane Criminals at Ionia, for transferring patients who have been restored to reason, back to the prison, come under the clause "other charges" in the statute, and should be audited by the Auditor General.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 27, 1891.

TO THE HONORABLE BOARD OF STATE AUDITORS, *Lansing, Mich.:*

GENTLEMEN— I have examined the question submitted by the clerk of your board, relative to the claims presented by the superintendent of the Asylum for Insane Criminals at Ionia, for transferring prisoners who have been restored to reason.

Section 29 of act 43 of the public acts of 1887, among other things, provides: "Whenever any convict, who shall have been confined in said asylum as a lunatic, shall have become restored to reason, and the medical superintendent shall so certify in writing, he shall be forthwith transferred to the House of Correction, Prison or Reformatory from whence he came." Just as soon as any person, convicted for violating the laws of this State, is transferred by the warden of a prison and placed in charge of the superintendent of the said asylum, he becomes a State patient, and

no one has any control over him except the superintendent; only by his direction can such person be transferred to the prison from which he came.

Section 30 of said act 43 expressly provides: "The bills for the maintenance, clothing and *other charges* of all State patients shall be rendered quarterly to the Auditor General * * * and shall be paid by the State Treasurer to the treasurer of the asylum on the warrant of the Auditor General."

It seems clear to me that these bills come under the clause "other charges," and that they are to be audited by the Auditor General, and there is no reason for referring them them to your board.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Railroad Lands.– Failure of Title.—Equitable Claim.

The law does not authorize the State of Michigan to refund money to persons who purchased lands of the Port Huron and Lake Michigan Railway Company, the title of the company having failed. Neither is claimant entitled to be reimbursed on the theory that he advanced money relying upon the representations of the State officers, when it appears the claimant was not misled in the matter.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, June 22, 1891.

To the Honorable the Board of State Auditors:

GENTLEMEN—I have examined the annexed papers relative to the claim of Samuel C. Sebring, asking that the State of Michigan reimburse him for money paid for the N. E. ¼ of the N. W. ¼ of section 11, township 4 N., of range 11 W.

The claimant in this cause presents the claim that the State of Michigan should reimburse him for his money on the theory that he advanced it relying upon the representations of the State of Michigan, that the land in question had been confirmed to the Port Huron & Lake Michigan Railway Company, and to sustain that position he furnishes a paper showing the tax history of this piece of land, and on the margin is indorsed this language: "Confirmed to the Port Huron & Lake Michigan R. R. Co., May 1st, 1873." The date of this instrument is the 17th day of December, 1875, and is signed by Ralph Ely, Auditor General of the State of Michigan.

Mr. Sebring also furnishes his deed by which he got title from the railroad company. The deed is dated and acknowledged May 6, 1875, some eight months prior to the time that he himself procured the tax history of this land.

There is no law in the State of Michigan authorizing or requiring the State to refund the money, and the only possible claim that Mr. Sebring could have would be one based in equity on the ground that he had been misled by some State officer. And it appears clearly, when the deed and certificate are taken together, and when the dates are compared, and the fact taken into consideration that the certificate produced was furnished to Mr. Sebring himself for taxes which he paid, that Mr. Sebring did not

have this certificate for eight months after he claimed to have had title, and could not under any possible circumstances be misled in the manner and form he claims. I must, therefore, give it as my opinion that the State of Michigan is under no legal obligations to pay to Mr. Sebring the money which he lost by reason of investing in this land.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Official Salary.—Bond to Repay Salary.—Title to Office, how Contested.—Right to Withhold Salary.

An officer *de facto*, whose office is contested by *quo warranto* and who is financially irresponsible, should be required to give a bond to repay the salary to the contestant in case he is defeated in *quo warranto* proceedings. Title to office can never be collaterally tried, and notice to the county treasurer to withhold payment is not a legal writ, and is nothing on which he can legally act. He can only act upon the apparent title of the actual incumbent, and has no right to withhold the salary of any officer.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, June 22, 1891.

W. A. KICKLAND, ESQ., *Deputy County Treasurer, Stanton, Mich.:*

DEAR SIR—Your favor concerning the right of the County Treasurer to pay the salary of the Probate Judge to L. C. Palmer, who is now holding that office, and whose right to the office is being contested by *quo warranto* proceedings in the Supreme Court by J. M. Fuller, who claims that he was elected to that office last spring, and who has given you notice to withhold payment, is received and considered.

I realize in the first place that, if Mr. Palmer is not financially responsible, that equity would require that he should give a bond to repay the money in case he is defeated in the suit, yet there is no statutory provision requiring this to be done.

It is a well established principal that the title to an office can never be collaterally tried. Notice to the County Treasurer to withhold payment is not a legal writ, and is nothing on which he can legally act. It would not give authority to refuse payment to Mr. Palmer.

The duty devolving upon the County Treasurer to pay official salaries can not be safely performed unless he is justified in acting upon the apparent title of the actual incumbent. He has no right to withhold the salary of any officer occupying an office simply because some one gave him notice that he claims the same office. If he had such authority, he would be vested with the authority to virtually test, at least to a limited extent, the right to hold an office.

Auditors of Wayne Co. vs. Benoit, 20 Mich., 176.
Comstock vs. Grand Rapids, 40 Mich., 397.
McVeany vs. Mayor, etc., N. Y., 80 N. Y., 185.
Dolan vs Mayor, 68 N. Y., 274.

In the latter case the Court say: "Distributing officers charged with the duty of paying official salaries have, in the discharge of that duty, the

right to rely upon the apparent title of an officer *de facto* and to treat him as an officer *de jure* without inquiring whether another has a better right."

As above suggested, I recognize that this rule would work a hardship in cases where an officer is not financially responsible, and am not prepared to say that the Court would hold it unjust if the officer should exact a bond that the money would be repaid, or paid to the claimant, in case that his office or title to the money was declared bad.

There is no question under the authorities that in case Mr. Fuller should be adjudged entitled to this office but what he would be entitled to an action against Mr. Palmer to collect all of the money from him.

An officer who is wrongfully kept out of an office is legally entitled to all of the salary that accrued to such office during such time.

An official salary is not made dependant upon the amount of work done and belongs to the office itself without regard to the personal service of the officer.

People vs. Miller, 24 Mich., 458.
Auditors of Wayne Co. vs. Benoit, 20 Mich., 176.
Comstock vs. Grand Rapids, 40 Mich., 397.

In this case, knowing as I do that a notice has been given, and believing that no court would judge it an unjust exaction to require a bond to be given, I advise you to require of Mr. Palmer a bond in a sum at least equal to the amount of salary that he will draw between now and the first of January next, conditioned that if he is defeated in the suit now pending, and Mr. Fuller is adjudged entitled thereto, that he will pay to the county treasurer, or his assigns, for the use and benefit of Mr. Fuller, the amount of money received by him after the giving of the said bond and prior to the decision of said cause; and that in case he refuses to give this bond, that you refuse to pay the salary unless ordered by the Court so to do.

Very truly yours,
A. A. ELLIS,
Attorney General.

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